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Contents

Federal Register

Vol. 71, No. 210

Tuesday, October 31, 2006

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Boll weevil, 63707–63717

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 63751–63752

Coast Guard
NOTICES
Grants and cooperative agreements; availability, etc.:
National boating safety activities; national, nongovernmental, nonprofit public service organizations, 63776–63778

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Loan and purchase programs:
Cottonseed Payment Program, 63665–63668
Dairy Disaster Assistance Payment Program, 63668–63674

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63848–63854

Defense Department
See Navy Department
NOTICES
Senior Executive Service Performance Review Board; membership, 63754

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Cerilliant Corp., 63781
ISP Freetown Fine Chemicals, Inc., 63781–63782

Economic Development Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Windo-Therm LLC et al., 63752

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Disability and Rehabilitation Research Projects and Centers Program, 64078–64084

Election Assistance Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63755–63756

Employee Benefits Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63783–63786
Employee benefit plans; class exemptions:
Securities loans, 63786–63799

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Central Products Co. et al., 63799–63800
Coville, Inc., 63800
Liebert Corp., 63801
Marathon Electric, 63801
Salisbury Manufacturing Corp., 63801
Smith Die & Mold, Inc., 63801
Sunshine Scholl Uniforms et al., 63801–63802
Velcorex, Inc., 63803
Westpoint Home, Inc., 63803
Whittier Wood Products et al., 63803–63804

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63782–63783

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Climate Change Science Program Product Development Advisory Committee, 63756
Environmental Management Site-Specific Advisory Board—
Idaho National Laboratory, 63756–63757
Paducah Gaseous Diffusion Plant, KY, 63757

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 63758

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 63694–63698
Indiana, 63699–63701
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 63738
Indiana, 63737–63738
NOTICES
Committees; establishment, renewal, termination, etc.:
National Environmental Education and Training Foundation, Inc., 63758–63759

Superfund; response and remedial actions, proposed settlements, etc.:
Empire Canyon Site, UT, 63759
Water pollution control:
Total maximum daily loads—
Arkansas, 63759–63760

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Boeing Model 737-700 IGW airplane, 63676–63678
Standard instrument approach procedures, 63679–63680
PROPOSED RULES
Airworthiness standards:
Special conditions—
Boeing Model 737-900ER airplane, 63718–63722
Gulfstream Aerospace Corp. Model GV, GV-SP, and GIV-X airplanes, 63723–63725
Class D and Class E airspace, 63725–63726
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63828–63829
Airport noise compatibility program:
Fort Lauderdale-Hollywood International Airport, FL, 63829–63834
Passenger facility charges; applications, etc.:
Springfield Airport Authority, IL, et al., 63834–63836

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63848–63854
Meetings; Sunshine Act, 63760–63761

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Blanket certification and rates clarification, 63680–63694

Federal Housing Finance Board
NOTICES
Reports and guidance documents; availability, etc.:
Federal antidiscrimination, whistleblower protection, and retaliation laws; No Fear Act notice, 63761–63762

Federal Maritime Commission
NOTICES
Senior Executive Service Performance Review Board; membership, 63762

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63848–63854
Banks and bank holding companies:
Formations, acquisitions, and mergers, 63762
Meetings; Sunshine Act, 63762

Federal Transit Administration
NOTICES
Buy America waivers:
Mars Electronics International et al., 63836–63837
Reports and guidance documents; availability, etc.:
Elderly Individuals and Individuals with Disabilities, Job Access and Reverse Commute, and New Freedom Programs; coordinated planning guidance and circulars, 63838

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Fender's blue butterfly, Kincaid's lupine, and Willamette daisy, 63862–63977
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Cape Sable seaside sparrow, 63980–64002

Food and Drug Administration
PROPOSED RULES
Human drugs, biological products, and animal drugs; foreign and domestic establishment registration and listing requirements
Meeting, 63726–63728
Medical devices:
General and plastic surgery devices—
Absorbable hemostatic device; reclassification, 63728–63732
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63764–63773
Meetings:
Vaccines and Related Biological Products Advisory Committee, 63773–63774
Reports and guidance documents; availability, etc.:
Absorbable hemostatic device; Class II special controls, 63774–63775

Foreign Assets Control Office
NOTICES
Sanctions; blocked persons, specifically designated nationals, terrorists, narcotics traffickers, and foreign terrorist organizations:
Narcotics-related blocked persons; additional designations, 63854–63856

Forest Service
NOTICES
Meetings:
Eastern Washington Cascades and Yakima Provincial Advisory Committees, 63751

Health and Human Services Department
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63763
Meetings:
American Health Information Community, 63763
Bioethics, President's Council, 63763–63764
Physical Fitness and Sports, President's Council, 63764

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Electronic grant applications submission; early registration on Grants.gov, 64070–64076

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Section 901 and related matters; taxpayer definition Correction, 63732
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63856–63857
Health Insurance Portability and Accountability Act of 1996; implementation:
Expatriation; individuals losing United States citizenship; quarterly listing, 63857–63858
Meetings:
Taxpayer Advocacy Panels, 63858

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 63752–63753

Justice Department
See Drug Enforcement Administration

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Boise District, 63779
Oil and gas leases:
New Mexico, 63779–63780

Millennium Challenge Corporation
NOTICES
Meetings; Sunshine Act, 63804

Minerals Management Service
NOTICES
Meetings:
Royalty Policy Committee, 63780

National Highway Traffic Safety Administration
PROPOSED RULES
Confidential business information, 63738–63749

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish, 63704–63706
Northeastern United States fisheries—
Tilefish, 63703–63704
International fisheries regulations:
West Coast States and Western Pacific fisheries—
Fraser River sockeye salmon, 63702–63703
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
New England and Mid-Atlantic Fishery Management Councils; hearings, 63749–63750
NOTICES
Grants and cooperative agreements; availability, etc.:
Enhanced Mobile Transmitter Unit Reimbursement Program, 63753–63754

National Park Service
NOTICES
National Register of Historic Places; pending nominations, 63780–63781

Navy Department
NOTICES
Environmental statements; availability, etc.:
Fort Rosecrans National Cemetery, Marine Corps Air Station Miramar, San Diego, CA, 63754–63755

Nuclear Regulatory Commission
PROPOSED RULES
Safeguards information protection from inadvertent release and unauthorized disclosure, 64004–64068
NOTICES
Meetings; Sunshine Act, 63805–63806
Applications, hearings, determinations, etc.:
Dow Chemical Co., 63804–63805
Duke Power Co. LLC, 63805

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
RULES
Absence and leave:
Senior Executive Service; accrual and accumulation Correction, 63859

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous materials:
Rulemaking procedures; required information for rulemaking petitions; CFR correction, 63701–63702

Presidential Documents
EXECUTIVE ORDERS
Democratic Republic of the Congo; blocking property of persons contributing to the conflict (EO 13413), 64103–64108
ADMINISTRATIVE ORDERS
Weapons of mass destruction; continuation of national emergency (Notice of October 27, 2006), 64109

Securities and Exchange Commission
RULES
Investment companies:
Eligible portfolio company; definition, 64086–64092
PROPOSED RULES
Investment companies:
Eligible portfolio company; definition, 64093–64102
NOTICES
Investment Company Act of 1940:
Tactical Allocation Services, LLC, et al., 63807–63810

Privacy Act; systems of records, 63810–63811
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 63812–63816
New York Stock Exchange LLC, 63816–63818

Small Business Administration
RULES
Organization, functions, and authority delegations:
Disaster Assistance Office; reorganization, 63674–63676
NOTICES
Disaster loan areas:
Florida, 63818
Hawaii, 63818–63819
Kentucky, 63819
New York, 63819–63820
Ohio, 63820
Virginia, 63820

State Department
NOTICES
Foreign Operations, Export Financing, and Related Programs Appropriations Act:
Serbia; proposed European Bank for reconstruction and development projects; U.S. position determination, 63821
Serbia, Bosnia, and Herzegovina; proposed European Bank for reconstruction and development projects; U.S. position determination, 63820–63821
Grants and cooperative agreements; availability, etc.:
Intensive Summer Language Institutes, 63821–63828
Meetings:
International Telecommunication Advisory Committee, 63828
Private International Law Advisory Committee, 63828

Substance Abuse and Mental Health Services Administration

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63775–63776

Thrift Supervision Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63848–63854

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Import statistics relating to competitive need limitations; 2006 annual GSP review; petitions requesting CNL waivers, 63806–63807

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 63778–63779

Treasury Department
See Comptroller of the Currency
See Foreign Assets Control Office
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Reports and guidance documents; availability, etc.:
Anti-terrorism financing guidelines for voluntary best practices for U.S.-based charities, 63838–63848

Veterans Affairs Department
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc:
Notice and assistance requirements provided to claimant, 63732–63737

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 63862–63977

Part III
Interior Department, Fish and Wildlife Service, 63980–64002

Part IV
Nuclear Regulatory Commission, 64004–64068

Part V
Housing and Urban Development Department, 64070–64076

Part VI
Education Department, 64078–64084

Part VII
Securities and Exchange Commission, 64086–64102

Part VIII
Executive Office of the President, Presidential Documents, 64103–64109

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

12938 (See Notice of October 27, 2006).....64109
13094 (See Notice of October 27, 2006).....64109
13382 (See Notice of October 27, 2006).....64109
13413.....64105

Administrative Orders:

Notices:
Notice of October of October 27, 2006.....64109

5 CFR

630.....63859

7 CFR

1427.....63665
1430.....63668

Proposed Rules:

301.....63707

10 CFR

Proposed Rules:

2.....64004
30.....64004
40.....64004
50.....64004
52.....64004
60.....64004
63.....64004
70.....64004
71.....64004
72.....64004
73.....64004
76.....64004
150.....64004

13 CFR

101.....63674
123.....63674

14 CFR

25.....63676
97.....63679

Proposed Rules:

25 (2 documents) 63718, 63723
71.....63725

17 CFR

270.....64086

Proposed Rules:

270.....64093

18 CFR

157.....63680

21 CFR

Proposed Rules:

20.....63726
201.....63726
207.....63726
314.....63726
330.....63726
514.....63726
515.....63726
601.....63726
607.....63726
610.....63726
878.....63728
1271.....63726

26 CFR

Proposed Rules:

1.....63732

38 CFR

Proposed Rules:

3.....63732

40 CFR

52 (3 documents) 63694, 63696, 63699

Proposed Rules:

52 (2 documents) 63737, 63738

49 CFR

106.....63701

Proposed Rules:

512.....63738

50 CFR

17.....63862
300.....63702
648.....63703
679.....63704

Proposed Rules:

17.....63980
648.....63749

Rules and Regulations

Federal Register
Vol. 71, No. 210
Tuesday, October 31, 2006

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

Commodity Credit Corporation

7 CFR 1427

RIN 0560–AH63

2005 Cottonseed Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a portion of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery of 2006 to provide assistance to producers and first-handlers of the 2005 crop of cottonseed in counties which were declared a natural disaster area by the President of the United States, and contiguous counties, due to Hurricanes Katrina, Ophelia, Rita, Wilma or a related condition in 2005.

DATES: This rule is effective October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, phone: (202) 720–7935; e-mail: *chris.kyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

Section 3015(a) of Subtitle A of Title III of Pub. L. 109–234 states, ''The Secretary shall use $15,000,000 of the funds of the Commodity Credit Corporation to provide assistance to producers and first-handlers of the 2005 crop of cottonseed in hurricane-affected counties.'' (Title III, Subtitle A, 120 Stat. 477, June 15, 2006) (''2006 Act''). This rule provides the Commodity Credit Corporation (CCC) regulations for implementation of the 2005 Cottonseed Payment Program authorized by this provision.

Assistance under the 2005 Cottonseed Payment Program is provided under the same terms and conditions, generally, as it was for the 2004 Cottonseed Payment Program. However, section 3015(b)(2) of the 2006 Act states that, for the 2005 program, funds will be distributed ''* * * based on cottonseed production during the most recent year for which a disaster payment specifically for cottonseed was not authorized.'' (120 Stat. 477) The most recent year for which a disaster payment specifically for cottonseed was not authorized was the 2003 cottonseed production year. Accordingly, this rule provides that 2003 cottonseed production will be used as a basis for payments provided under the 2005 Cottonseed Payment Program.

Also, as provided in section 3015(b)(2) of the 2006 Act, payment calculations for the 2005 Cottonseed Payment Program will differ from those used for the 2004 Cottonseed Payment Program. The 2004 program payments were based upon a loss attributable to the disaster. The 2005 Cottonseed Payment Program shall be based solely upon production during the most recent year for which a disaster payment specifically for cottonseed was not authorized (the 2003 crop), without requiring proof of a loss.

Another difference from the 2004 program is that this rule clarifies which counties are eligible for assistance. This rule clearly defines the term ''hurricane affected counties'' for the 2005 program as those counties designated as a disaster area resulting from Hurricanes Katrina, Ophelia, Rita, Wilma, or a related condition, and contiguous counties thereof, meaning counties directly adjoining the primary disaster county.

Executive Order 12866

This rule has been determined to be ''Significant'' under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEOA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other foreseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR part 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 19115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

Section 3034(b)(3) of the 2006 Act requires that this rule be implemented and administered without regard to the Paperwork Reduction Act. Therefore, the normal 60-day public comment period and OMB approval do not apply to the information collections required by this rule.

E-Government Act Compliance

CCC 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. For information pertinent to E–GOV compliance related to this rule, please contact the person named above under the information contact section.

List of Subjects in 7 CFR Part 1427

Agriculture, Cottonseed.

■ For the reasons set out in the preamble, 7 CFR part 1427 is amended as set forth below.

PART 1427—COTTON

■ 1. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7231–7236; 15 U.S.C. 714b, 714c; Pub. L. 108–324, Pub. L. 108–447, Pub. L. 109–234.

Subpart H—2005 Cottonseed Payment Program

■ 2. Add subpart H as follows:

Subpart H—2005 Cottonseed Payment Program

Sec.

1427.1300 Applicability.
1427.1301 Administration.
1427.1302 Definitions.
1427.1303 Eligible cottonseed.
1427.1304 Eligible applicants (first handlers).
1427.1305 Payment application and deadline.
1427.1306 Available funds.
1427.1307 Applicant payment quantity.
1427.1308 Total payment quantity.
1427.1309 Payment rate.
1427.1310 Payment calculation and form.
1427.1311 Liability of first handler.

§ 1427.1300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions under which the Commodity Credit Corporation (CCC) will provide payments under the cottonseed payment program for the 2005 crop year of cottonseed. Additional terms and conditions may be set forth in the application or other forms which must be executed to participate in the cottonseed payment program.

(b) Payments shall be available only as provided in this subpart and only with respect to 2005 crop cottonseed in hurricane-affected counties according to § 1427.1303 of this part.

§ 1427.1301 Administration.

(a) The cottonseed payment program shall be administered by the Executive Vice President, CCC, or a designee and carried out by employees of the Farm Service Agency (FSA).

(b) Representatives and employees of FSA have no authority to modify or waive any of the provisions of the regulations in this subpart.

(c) The Executive Vice President, CCC, or a designee, may determine any question arising under the program or reverse or modify any determination made by any FSA official or employee.

(d) The Deputy Administrator for Farm Programs, FSA, may specify, waive or modify deadlines and other program requirements where lateness or failure to meet such other requirements do not affect adversely the operation of the cottonseed payment program.

(e) A representative of CCC may execute cottonseed payment program applications and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void except as otherwise provided in this subpart.

§ 1427.1302 Definitions.

The definitions in this section shall apply to the cottonseed payment program in this subpart. The terms defined in § 1427.3, Subpart A, Nonrecourse Cotton Loan and Loan Deficiency Payment shall also be applicable to this subpart.

Application period means a period, as announced by CCC, during which applications for payments under the Cottonseed Payment Program must be received to be considered for payment.

Cottonseed means the seed from any varieties of upland cotton and extra long staple (ELS) cotton produced and ginned in the United States.

Gin means a person (*i.e.*, an individual, partnership, association, corporation, cooperative marketing association, estate, trust, State or political subdivision or agency thereof, or other legal entity) that removes cotton seed from cotton lint in commercial quantities.

Hurricane-affected county means a county declared a natural disaster or included in the geographic area covered by a natural disaster declaration related to Hurricane Katrina, Hurricane Ophelia, Hurricane Rita, Hurricane Wilma, a related condition, or a county contiguous to such a county.

Lint means cotton lint as contained in bales of cotton ordinarily marketed as cotton and excludes any linters, raw motes, re-ginned motes, cleaned motes, and any other gin waste or byproduct not traditionally defined as cotton lint.

Ton means a unit of weight equal to 2,000 pounds avoirdupois (907.18 kilograms).

§ 1427.1303 Eligible cottonseed.

To be eligible for payments under this subpart, cottonseed must:

(a) Have been produced from cotton grown in a hurricane-affected county as defined in section 1427.1302 during the 2005-crop production period.

(b) Have been the result of ginning 2005-crop cotton by the applicant.

(c) Not have been destroyed or damaged in any amount at the gin by fire, flood, or other events such that its loss or damage was compensated by any other local, State, or Federal government or private or public insurance or disaster relief payments.

§ 1427.1304 Eligible applicants (first handlers).

(a) An eligible applicant shall be a first handler of cottonseed or a gin that has an eligible payment quantity as determined under § 1427.1307. This is the gin(s) that ginned 2005 crop cotton for the producer except if the 2005 gin is no longer in business to the extent the company has no means to apply for payment on behalf of producers and distribute funds, the current gin becomes the applicant. Only an eligible first handler shall be eligible to file an application for payment in this subpart.

(b) Applicants must comply with the terms and conditions set forth in this subpart issued by CCC, and sign and submit an accurate, legible, and complete Cottonseed Payment Program Application and Certification.

(c) Applicants signing the cottonseed payment application or receiving payment in this subpart must share and distribute any payment with the producer of the cotton that was the basis for the cottonseed payment to the extent that the effect of the loss of 2005 crop cottonseed was borne by the producer rather than the gin. To the extent that such funds shall be shared with and distributed to the producer by the gin pursuant to this subpart, those funds will be considered to have been received by the applicant on behalf of such producers.

§ 1427.1305 Payment application and deadline.

(a) Payments in this subpart shall be made available only to eligible first handlers of cottonseed based on information provided on a Cottonseed Payment Program Application and Certification.

(b) The application deadline shall be 45 calendar days after the rules in this subpart become effective. A further

extension of application time may be announced by CCC. Payment applications must be received by the program application deadline announced by CCC. Applications received after such application deadline will not be accepted for payment.

(c) The Cottonseed Payment Program Application and Certifications may be obtained from the CCC as announced by press release. In order to participate in the cottonseed payment program in this subpart, first handlers of cottonseed must execute and submit to CCC according to announced instructions the Cottonseed Payment Program Application and Certification.

§ 1427.1306 Available funds.

The total available program funds for the 2005-crop cottonseed program provided for in this subpart shall be $15 million.

§ 1427.1307 Applicant payment quantity.

(a) The applicant's payment quantity of cottonseed will be calculated by the applicant and submitted on the Cottonseed Payment Application and Certification for approval by CCC.

(1) An applicant must be an eligible gin to which a producer delivered 2005 cotton and the applicant's payment eligibility will be based on the determination of the total amount of 2003 crop lint deliveries by cotton producers in eligible counties.

(2) The 2003 crop lint delivery determination will be made by the applicant for each eligible county producer by producer, based upon producer certification, ginning records, or other relevant information as applicable. If the producer delivered 2003 crop cotton to a gin(s) different from the gin that received 2005 crop deliveries, the 2005 gin shall contact the other gins for production information or obtain other proof of the eligible quantity from the cotton producer so as to make or verify the calculation called for in paragraph (a) of this section.

(3) If the producer delivered cotton to more than one 2005 gin, each gin shall be an applicant. If the producer did not deliver cotton to the same gins in 2003, the applicants shall divide the total 2003 production, obtained according to paragraph (a)(2) of this section, equally between each applicant gin.

(4) If the producer did not grow any 2005 crop cotton in the eligible county, the applicant shall not apply for payment on behalf of the producer.

(5) If the producer grew 2005 crop cotton but did not produce 2003 crop cotton, the producer shall be considered a new producer. In this case, the applicant shall compute an assumed 2003 lint delivery amount by multiplying the 2003 USDA National Agricultural Statistics Service (NASS) county average yield for the applicable county times the producer's 2005 cotton acreage in the eligible county. Proof of cotton acreage may be obtained by the applicant from producer certification, FSA county office acreage reports, or crop insurance records. If the NASS county average yield is not computed for the applicable county, the applicant shall use the NASS county average yield for the nearest cotton producing county with the highest NASS county average yield.

(b) The applicant's lint eligibility will be calculated individually with respect to all eligible cotton producers and those individual eligibilities for the gin will then be added together to determine the total lint eligibility of the gin.

§ 1427.1308 Total payment quantity.

(a) The total quantity of 2005-crop cottonseed eligible in this subpart shall be based on the total payment quantity of cottonseed as determined under this subpart for which timely applications are filed. Eligible cottonseed for which no application is received according to the announced application instructions shall not be included in the total payment quantity of cottonseed.

(b) The total payment quantity of cottonseed (ton-basis) shall be calculated by CCC by multiplying the weight of cotton lint (ton-basis) for which payment is requested by all applicants, as approved by CCC, by the Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint, excluding the highest and lowest years' production, as determined by CCC for the 5 years preceding the 2005 crop.

§ 1427.1309 Payment rate.

The payment rate (dollars per ton) for the purpose of calculating payments made available in accordance in this subpart shall be determined by CCC by dividing the total available program funds, less an amount reserved for approved corrections, by the total eligible payment quantity of cottonseed. However, in no event may the total payment to an eligible applicant exceed the national average price of 2005 crop cottonseed as determined by CCC, or $98 per ton, multiplied by the applicant's total eligible payment quantity.

§ 1427.1310 Payment calculation and form.

(a) Payment in accordance in subpart shall be determined for individual applicants by multiplying:

(1) The payment rate as determined in subpart § 1427.1309 by

(2) The eligible payment quantity of the applicant was determined in § 1427.1308 and other provisions in this part.

(b) After receipt of the application for payment, CCC will issue payments to the applicant by electronic funds transfer to the applicant's account except that applicants may request payment be made by mailed check.

§ 1427.1311 Liability of first handler.

(a) If any person makes any erroneous or fraudulent representation in obtaining a cottonseed payment in this part, or in connection with such a payment engages in a scheme or device that tends to defeat the purposes of this program, the person shall be liable to CCC for the amount of the payment and interest on such payment as determined by CCC. Such remedy will be in addition to whatever additional remedies may be allowed by law.

(b) If more than one person executes a program payment application with CCC on the same quantity and payments are made there under, each such person shall be jointly and severally liable for any violation of the terms and conditions for any payment made to anyone under that application or for any refund due from any person signing that application. Such liability shall remain until payment in full is made of any such refund and its related charges.

(c) If a person receives a program payment in excess of the amount authorized in this subpart, that person shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

(d) For three years after the date of the application for 2005-crop payments, the applicant shall keep records, including records supporting the quantity of cottonseed for which payment was requested, and furnish such information and reports relating to the application to CCC as requested. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payment received, plus interest thereon, as determined by CCC. In the event of a controversy concerning payments, records must be kept for such longer period as may be specified by CCC until such controversy is resolved. Destruction of records at any time is at the risk of the applicant.

Signed in Washington, DC, on October 25, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–18249 Filed 10–30–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH59

2005 Dairy Disaster Assistance Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the regulations for the 2005 Dairy Disaster Assistance Payment Program. This program will assist dairy producers by providing payments to those who suffered dairy production and milk spoilage losses due to hurricanes or a related condition in 2005.

DATES: This rule is effective October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512. *Telephone:* (202) 720–1919; e-mail: *Danielle.Cooke@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 3034 of the Emergency Agricultural Disaster Assistance Act of 2006 (the 2006 Act) requires that the regulations necessary to implement Title III of the 2006 Act, which includes the regulations for this program, are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12998. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

Section 3034 of the 2006 Act provides that the promulgation of regulations and the administration of Title III of the 2006 Act shall be made without regard to chapter 5 of title 44 of the Untied States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

Background

Section 3014 of the 2006 Act requires the Secretary of Agriculture to use $17 million to make payments to dairy producers for losses in counties affected by 2005 hurricanes. Hurricanes Katrina, Ophelia, Rita, and Wilma severely impacted dairy producers in certain areas of the Gulf region of the United States during the months of August through October of 2005. As a result, several dairy producers incurred devastating decreases in production due to cattle losses and milk that had to be dumped because of closed milk plants and damaged containment equipment. Also, the loss of electricity, the shortage of fuel, and infrastructure damage temporarily interrupted the flow of dairy products to markets.

Pursuant to the legislation, this rule addresses the situation by establishing a program similar to the 2004 Dairy Disaster Assistance Payment (DDAP–I) Program authorized by section 103 of Division B of Public Law 108–324, for dairy production and spoilage losses incurred by producers in the southeastern region of the United States, due to 2004 Hurricanes Charley, Frances, Ivan, and Jeanne. The final rule for DDAP–I was published on

September 26, 2005 (70 FR 56113). As with DDAP–I, the payments provided by this rule will offset a portion of the per-pound losses dairy producers have incurred commercially marketing milk in the United States.

Dairy producers who suffered production losses and dairy spoilage losses, as a result of Hurricanes Katrina, Ophelia, Rita, and Wilma disaster, or a condition related to those hurricanes, may apply for compensation for losses incurred during the 2005 calendar year. Benefits will be provided to eligible dairy producers in those counties declared a natural disaster by the Secretary of Agriculture or designated a major disaster or emergency by the President of the United States, who meet all program eligibility requirements, and are subsequently approved for participation in the 2005 Dairy Disaster Assistance Payment Program. This program is similar to a program operated with respect to 2004 programs (DDAP–I) and will be referred to as DDAP–II. Dairy producers in counties contiguous to a directly eligible county are also eligible for DDAP–II benefits. Eligible dairy producers will receive an immediate payment to help pay operating expenses and meet other financial obligations.

To be eligible, dairy producers must have produced milk in the United States during the 2005 calendar year as part of a dairy operation located in a county declared a natural disaster in 2005, or a contiguous county, because of Hurricane Katrina, Ophelia, Rita, or Wilma. Losses and declarations associated with Hurricane Dennis or other disasters are not covered. As a result of the hurricanes or related condition, the producer must have suffered dairy production losses and dairy spoilage losses in the eligible months. In addition, adequate evidence of dairy production losses and dairy spoilage losses must be provided to FSA to substantiate the losses suffered and certified by each producer. Payments will be made according to a formula and will be subject to funding and other limitations. Further, payments will not be reduced as a result of payments from a milk buyer or marketing cooperative for dumped or spoiled milk.

Applicants must apply for benefits during the sign-up period announced by the Deputy Administrator for Farm Programs. At the close of the sign-up period, the total production and spoilage losses from all eligible applicants will be determined. Payment eligibilities will be separately calculated on an operation by operation basis. An individual may be involved in more than one operation. Payments to eligible producers will be calculated by multiplying the eligible pounds by the average price received for commercial milk production in the affected areas during the eligible months. If the total amount of available funding ($17 million, less any reserve established to account for disputed claims) is insufficient to compensate eligible producers for eligible losses, then CCC will pay losses at two levels in an effort to more equitably distribute the limited funds and maximize the effectiveness of the program.

Specifically, in case of inadequate funds for all eligible losses, CCC will calculate each operation's overall quarterly percentage reduction for the full disaster claim period that corresponds with the applicable hurricane, from the calculated base for the operation for the full quarter for the applicable hurricane. The disaster claim period applicable to: (1) Hurricane Katrina and Hurricane Rita are the months of August through December 2005; and (2) Hurricane Ophelia and Hurricane Wilma are the months of October through December 2005. If a reduced payment is needed due to funding constraints, calculated losses over the applicable disaster claim period greater than 20 percent of a producer's normal production will be paid at the maximum per-pound payment rate. A loss over 20 percent in one or two of the eligible months will not qualify for the maximum per-pound payment. Payments for eligible losses below the 20-percent threshold will be made at a rate that will exhaust the available funds that remain following payment of eligible losses at the higher level. The 20 percent threshold mirrors that of DDAP–I and some other disaster programs. An example of how the apportionment might affect producers is set out below. If funds are adequate for all eligible losses, all eligible producers will be paid at the ''maximum rate'' which amounts to the average price received for commercial milk production in their area during the applicable months of August through December of 2005. The apportionment example is as follows:

Example:

	Producer A (Louisiana)	Producer B (Florida)	Producer C (Alabama)	Producer D (Texas)
Total Base Production	800,000	2,000,000	1,500,000	600,000
Actual Production	485,000	1,820,000	1,070,000	490,000
Pounds Dumped or Spoiled	5,000	20,000	20,000	10,000
Total Eligible 'Loss	320,000	200,000	450,000	120,000
20% of Base Production	160,000	400,000	300,000	120,000
Pounds of loss above 20% loss level	160,000	0	150,000	0
Payment Rate	$0.1647/lb.	$0.1819/lb.	$0.1649/lb.	$0.1419/lb.
DDAP for loss above 20%	$26,352	$0	$24,735	$0
DDAP for under 20% loss @ $0.12/lb. (example only)	$19,200	$24,000	$36,000	$14,400
Total DDAP	$45,552	$24,000	$60,735	$14,400
Eligible Losses x average price	$52,704	$36,380	$74,205	$17,028
Percent production loss suffered	40	10	30	20
Percent financial losses recovered from DDAP	86	66	82	85

Dairy producers who have received a payment for the loss under the Dairy Indemnity Payment Program (7 CFR part 760) shall be ineligible for payments under this rule. Gross revenue and per-person payment limits do not apply. Payments are subject to all requirements of the regulations and program documents. Information provided on

applications and supporting documentation will be subject to verification by FSA. False certifications by producers carry strict penalties and FSA will verify applications with random spot-checks. Dairy producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund any payments issued under this program with interest, and may be subject to other civil, criminal, or administrative remedies. Payments will be made according to a formula and will be subject to limitations. During the application period, dairy producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to CCC by mail or FAX. Program applications may be obtained in person, by mail, telephone, and facsimile from producers' designated FSA county office or via the Internet at *www.fsa.usda.gov/dafp/psd/*.

List of Subjects in 7 CFR Part 1430

Dairy, Disaster assistance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set out in the preamble, 7 CFR part 1430 is amended as follows:

PART 1430—DAIRY PRODUCTS

■ 1. The authority citation for part 1430 is revised to read as follows:

Authority: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c; Sec. 3014 of Pub. L. 109–234, 16 U.S.C. 3801 note, 120 Stat. 474.

■ 2. Add subpart E to read as follows:

Subpart E—2005 Dairy Disaster Assistance Payment Program (DDAP–II)

Sec.

1430.300 Applicability.
1430.301 Administration.
1430.302 Definitions.
1430.303 Time and method of application.
1430.304 Eligibility.
1430.305 Proof of production.
1430.306 Determination of losses incurred.
1430.307 Rate of payment and limitations on funding.
1430.308 Availability of funds.
1430.309 Appeals.
1430.310 Misrepresentation and scheme or device.
1430.311 Death, incompetence, or disappearance.
1430.312 Maintaining records.
1430.313 Refunds; joint and several liability.
1430.314 Miscellaneous provisions.

Subpart E—2005 Dairy Disaster Assistance Payment Program II (DDAP–II)

§ 1430.300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to DDAP–II authorized by section 3014 of Public Law 109–234. Benefits are available to eligible United States producers who have suffered in 2005 dairy production losses and dairy spoilage losses in eligible counties as a result of Hurricanes Katrina, Ophelia, Rita, and Wilma or conditions related to those hurricanes.

(b) To be eligible for this program, a producer must have been a milk producer in 2005 in a county declared a natural disaster by the Secretary of Agriculture or declared a major disaster or emergency designated by the President of the United States due to a 2005 hurricane or related condition thereof, or in a contiguous county to a county that is directly eligible by way of a natural disaster declaration. Only losses occurring in these counties are eligible for payment under this program.

(c) Subject to the availability of funds, benefits shall be provided by the Commodity Credit Corporation (CCC) to eligible dairy producers. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a disaster assistance payment for dairy production losses and dairy spoilage losses.

(d) To be eligible for payments, producers must comply with the provisions of, and their losses must meet the conditions of, this subpart and any other conditions imposed by CCC.

§ 1430.301 Administration.

(a) DDAP–II shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision of delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the 2005 Dairy Disaster Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in DDAP-II is voluntary, program benefits are not provided unless the participant furnishes all requested data.

§ 1430.302 Definitions.

The definitions in 7 CFR part 718 shall apply to this subpart except to the extent they are inconsistent with the provisions of this subpart. In addition, for the purpose of this subpart, the following definitions shall apply.

Application means DDAP–II Application.

Application period means the time period established by the Deputy Administrator for producers to apply for program benefits.

Base month means the base month for the particular 2005 hurricane assigned in § 1430.304.

CCC means the Commodity Credit Corporation of the Department.

Claim period means as assigned in this subpart the qualifying months of calendar year 2005, following the base month, in which the loss occurred.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

Dairy operation means any person or group of persons who, as a single unit, as determined by CCC, produces and markets milk commercially from cows and whose production facilities are located in the United States.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Hundredweight or cwt. means 100 pounds.

Hurricane-affected county means a county included in the geographic area covered by a natural disaster declaration related to Hurricane Katrina, Hurricane Ophelia, Hurricane Rita, Hurricane Wilma or conditions related to those hurricanes, and includes counties which qualify because they are contiguous to a county that qualifies by a natural disaster declaration.

Milk handler or cooperative means the marketing agency to, or through which, the producer commercially markets whole milk.

Milk marketings means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use. In counting milk toward production amounts, dumped milk will not be considered as marketed for commercial use. Such dumped milk shall be counted toward production but will be accounted for separately from milk that is marketed for normal commercial use as determined by the Deputy Administrator. All production in the months for which loss coverage is available will be counted in making determinations under this part, as determined by the Deputy Administrator, with care to avoid double counting, and with care to avoid a calculated loss that overstates the actual losses. Adjustments may be made as appropriate to accomplish these objectives.

Natural disaster declaration means a natural disaster declaration issued by the Secretary of Agriculture during calendar year 2005 under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 (a)), or a major disaster or emergency designation by the President of the United States during calendar year 2005 under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, including declarations and designations by both the President and Secretary made during calendar year 2006 for which a request was pending as of December 31, 2005.

Payment pounds means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this subpart.

Producer means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, citizens of, or legal resident aliens in the United States, and who directly or indirectly, as determined by the Secretary, share in the risk of producing milk, and make contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity.

Reliable production records means evidence provided by the producer that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, and records to verify production costs, contemporaneous measurements, and contemporaneous diaries that are determined acceptable by the county committee.

Starting base production means actual commercial production marketed by the dairy operation during the base month applicable to the 2005 hurricane disaster, or alternative period established by the Deputy Administrator.

Verifiable production records means evidence that is used to substantiate the amount of production including any part marketed normally, dumped, or otherwise disposed of, and that can be verified by CCC through an independent source.

§ 1430.303 Time and method of application.

(a) Dairy producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Application at *http://www.sc.egov.usda.gov.*

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in § 1430.302. Applications and any other supporting documentation shall be submitted to the FSA county office serving the county where the dairy operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. The closing date shall be no sooner than November 30, 2006. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the risk of a dairy operation's total production must certify to the information on the Application before the Application is considered complete.

(d) Each dairy producer requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved.

§ 1430.304 Eligibility.

(a) Producers in the United States are eligible to receive hurricane-related dairy disaster benefits under this part only if they have suffered dairy production or dairy spoilage losses in 2005 as a result of a hurricane disaster or related condition, in a hurricane-affected county. To be eligible to receive payments under this subpart, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced during the 2005 calendar year;

(2) Be a producer on a dairy farm operation physically located in an eligible county where dairy production and milk spoilage losses were incurred as a result of 2005 hurricanes, or a related condition, in and limiting their claims to losses occurring in those counties and contiguous counties;

(3) Provide adequate proof, to the satisfaction of the County Committee, of monthly milk production dumped and commercially marketed by all persons in the eligible dairy operation during the base month and claim period that corresponds with the applicable hurricane-related disaster during the 2005 milk marketing year, or other period as determined by CCC, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and comply with terms and conditions of this subpart, instructions

issued by CCC and instructions contained in the Application to be eligible for benefits under this subpart.

(d) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the 2005 calendar year, as applicable, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments are limited to losses in eligible counties, in eligible months.

(f) All payments under this part are subject to the availability of funds.

(g) Eligible losses are determined from the applicable base month that corresponds to the hurricane disaster or related condition and must have occurred during the claim periods applicable to the disaster as follows:

(1) For Hurricane Katrina and Hurricane Rita the base month is July 2005 and the corresponding claim period are the 2005 calendar months of August through December; and

(2) For Hurricane Ophelia and Hurricane Wilma the base month is September 2005 and the corresponding claim period are the 2005 calendar months of October through December.

§ 1430.305 Proof of production.

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production and spoilage losses can be computed in accordance with § 1430.306.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dumped production and dairy cow purchases, for each month of the applicable base month and claim period that corresponds with the applicable 2005 hurricane disaster or related condition, and must specifically identify any production during the applicable claim period that is dumped. If a month other than the applicable base month is used for base creation purposes, records for that month must be provided.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were hurricane-related and occurred in an eligible county in an eligible month.

(2) Additional supporting documentation may be requested by CCC as necessary to verify production or spoilage losses and dairy herd increases or decreases to the satisfaction of CCC.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: Tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production or spoilage losses, or any other documents available to confirm or adjust the production history and losses incurred by the dairy operation.

(d) Adequate proof of dairy cow additions to the milking herd during the eligible months can include, but is not limited to sales receipts, invoices, State health certificates, or any other documents available to confirm the cow purchases.

(e) If adequate proof of normally marketed production, dumped production, and any other production for relevant periods is not presented to the satisfaction of CCC, the request for benefits will be rejected. In the case of a new producer that had no verifiable, actual, commercial production marketed by the dairy operation during the applicable base month, but which suffered eligible losses, an alternate base period may be established by the Deputy Administrator.

§ 1430.306 Determination of losses incurred.

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable claim period, as provided by § 1430.304(g), that corresponds with the hurricane-related disaster. Specifically, dairy production and spoilage losses incurred by producers under this subpart are determined on the established history of the dairy operation's actual commercial production marketed during the applicable claim period that corresponds with the hurricane-related disaster, and actual production dumped or otherwise not marketed during that same claim period, as provided by the dairy operation consistent with § 1430.305. Except as otherwise provided in these regulations, the starting base production, as defined in § 1430.302 and established in § 1430.304(g), is adjusted downward by a percentage determined by CCC to determine the base production for the applicable claim period that corresponds to the hurricane-related disaster. These adjustments are made to account for the seasonal declines that can occur during the months within the claim period. The base production for each of the applicable claim period months is calculated by reducing the starting base production of the applicable base month, or alternate month approved by the Deputy Administrator for new producers, as follows:

(1) August 2005 base production is the starting base production reduced by 8 percent;

(2) September 2005 base production is the starting base production reduced by 17 percent;

(3) October 2005 base production is the starting base production reduced by 11 percent. However, if losses occurred only as a result of Hurricanes Ophelia and Wilma, for October 2005, base production is not reduced.

(4) November 2005 base production is the starting base production reduced by 6 percent, unless eligible losses occurred only as a result of Hurricanes Ophelia and Wilma, in which case, for November 2005, base production is not reduced.

(5) December 2005 base production is not reduced by a downward adjustment percentage.

(b) The eligible dairy production losses for a dairy operation for each of the claim period months of August through December 2005, as applicable, will be:

(1) The new base production for the dairy operation calculated under paragraph (a) of this section less,

(2) For each such month for each dairy operation, the total of:

(i) Actual commercially-marketed production (not counting dumped production counted under paragraph (b)(1)(ii) of this section); plus

(ii) The pounds of milk production dumped (whether related to the hurricane or not), or otherwise not commercially marketed (whether related to the hurricane or not). For dumping losses to be eligible for payment, however, they must, as with other program losses, be hurricane related, as described under paragraphs (c) and (d) of this section.

(c) Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the hurricane or is determined by CCC not to be hurricane-related. Actual production, as adjusted, that exceeds the adjusted base production will mean that the dairy operation incurred no eligible production losses for the corresponding month as a result of the hurricane disaster, and that the production level for that month does not qualify for a production loss payment under this program.

(d) Eligible dairy spoilage losses incurred by producers under this subpart for each of the months August through December 2005, as applicable to the claim period that corresponds with the hurricane-related disaster, will be determined based on actual milk produced in those months that was dumped on the farm as a result of the 2005 hurricanes, or other related condition. Proper documentation of milk dumped on the farm as a result of spoilage due to a hurricane must be provided to CCC as provided in § 1430.305.

(e) Calculated production losses may be adjusted by CCC based on the monthly average of daily dairy cow additions or reductions to the milking herd during the applicable claim period that corresponds with the hurricane-related disaster, to account for production adjustments as a result of dairy cow purchases, sales, or death losses. Production adjustments can be calculated using the average number of dairy cows in a dairy operation's milking herd and the average production per cow during each applicable month. Per-cow production averages during the applicable claim period months will be determined based on the actual per-cow production average during the base month applicable to the hurricane-related disaster and reduced downward according to the seasonal decline percentages provided in paragraph (a) of this section, to determine the total production that may be credited back to the dairy operation's total production losses. To qualify for the production adjustment credit:

(1) Producers in eligible dairy operations must report any increases to the dairy cow milking herd during the applicable base month and claim period that corresponds to the hurricane disaster condition to the eligible hurricane.

(2) Adequate supporting documentation according to § 1430.305 must be provided to the satisfaction of the COC to verify any claims of herd increases during the eligible period.

(3) Any cows purchased during the eligible period that would increase the dairy cow milking herd must have been to offset production losses as a result of the 2005 hurricanes, or other related condition.

(f) Eligible production and spoilage losses as otherwise determined under paragraphs (a) through (e) of this section are added together to determine total eligible losses incurred by the dairy operation subject to all other eligibility requirements as may be included in this part or elsewhere.

(g) Payment on eligible dairy operation losses is calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation's eligible production loss among the producers of the dairy operation according to § 1420.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

(h) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Department of Agriculture (USDA) for the same losses, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same losses. If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the FSA administrative office from which the payment was received.

§ 1430.307 Rate of payment and limitations on funding.

(a) Subject to the availability of funds, the payment rate for eligible production and spoilage losses determined according to § 1430.306 is, depending on the State, the amount set forth below which is derived from the monthly Mailbox milk price for the Florida, the Southeast, Western Texas or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service. Maximum payment rates for eligible losses for dairy operations located in specific states are as follows:

(1) Florida—$18.19 per hundredweight ($0.1819 per pound), which is averaged to account for the mailbox price during the months of August 2005 and October 2005 when the hurricane disasters occurred.

(2) Louisiana—$16.47 per hundredweight ($0.1647 per pound), which is averaged to account for the mailbox price during the months of August 2005 and September 2005 when the hurricane disasters occurred.

(3) Alabama, Arkansas, Georgia and Mississippi—$16.49 per hundredweight ($0.1649 per pound).

(4) North Carolina—$15.39 per hundredweight ($0.1539 per pound).

(5) Texas—$14.19 per hundredweight ($0.1419 per pound).

(6) Tennessee—$15.38 per hundredweight ($0.1538 per pound).

(b) Subject to the availability of funds, each eligible dairy operation's payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses. Where there are multiple producers in the dairy operation, individual producers' payments are disbursed according to each producer's share of the dairy operation's production as specified in the Application.

(c) If the total value of losses claimed under paragraph (b) of this section exceeds the $17 million available for DDAP–II, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for the full disaster claim period that corresponds with the applicable hurricane-related disaster (not a monthly average for any one month), are greater than 20 percent of the total base production for those applicable claim period months will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two of the eligible months does not itself qualify for the maximum per-pound payment. Total eligible losses for a producer, as calculated under § 1430.306, of less than or equal to 20 percent during the eligible claim period will then be paid at a rate determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event shall the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in their area as defined in paragraph (a) of this section.

(e) A reserve may be created to handle pending or disputed claims, but claims shall not be payable once the available funding is expended.

§ 1430.308 Availability of funds.

The total available program funds shall be $17 million as provided by section 3014 of Title III of Public Law 109–234.

§ 1430.309 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination in

accordance with the appeal regulations set forth at 7 CFR parts 11 and 780. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 1430.307 and 1430.308 and other limitations as may apply.

§ 1430.310 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer shall be ineligible to receive assistance under this program if the producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1430.311 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by CCC.

§ 1430.312 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the dairy operations under this program. Destruction of the records after such date shall be at the risk of the party imposed with the recordkeeping requirements by this subpart.

§ 1430.313 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment under the application or this subpart, must be refunded to CCC.

(b) A refund required under this section shall be due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 1403.

(c) Persons signing a dairy operation's application as having an interest in the operation shall be jointly and severally liable for any refund and related charges found to be due under this section.

(d) In accord with parts 792 and 1403 of this title, interest shall be applicable to any refunds required under this subpart. Such interest shall be charged at the rate the United States Department of the Treasury charges CCC for funds, and shall accrue from the date FSA or CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1430.314 Miscellaneous provisions.

(a) CCC may offset or withhold any amount due CCC under this subpart in accordance with 7 CFR part 1403.

(b) Payments or any portion thereof due under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock or property of any kind, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(c) Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

Signed at Washington, DC, on October 25, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–18247 Filed 10–30–06; 8:45 am]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 101 and 123

RIN 3245–AF42

Administration and Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: The purpose of this direct final rule is to amend SBA regulations to reflect the new structure of the Office of Disaster Assistance (ODA) following an office reorganization. This rule amends the regulation to name and list five disaster centers, four that serve the public (disaster assistance customer service center, disaster assistance processing and disbursement center, disaster assistance field operations center east, disaster assistance field operations center west) and one that provides personnel and administrative services to the other disaster centers and also houses the Disaster Credit Management System (DCMS) operations center, the field inspection team headquarters, and the administrative law function (disaster assistance personnel and administrative services center). This rule also amends the regulation by making conforming amendments to existing regulations on SBA's Disaster Loan Program.

DATES: This rule is effective November 30, 2006 without further action, unless adverse comment is received on or before the effective date. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments identified by RIN 3245–AF42 by any of the following methods (1) *Mail/Hand Delivery:* James E. Rivera, Deputy Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416; (2) *Fax:* (202) 205–7728; (3) *E-mail: James.Rivera@sba.gov*; or Federal eRulemaking Portal: *http://www.regulations.gov*, following the specific instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: James E. Rivera, Deputy Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416; (202) 205–6734; fax (202) 205–7728; or e-mail *James.Rivera@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Prior to the office reorganization, ODA was comprised of four disaster

area offices located in Niagara Falls, NY, Sacramento, CA, Atlanta, GA, and Fort Worth, TX. Disaster area offices were managed by Area Directors who reported to the Deputy Associate Administrator for Disaster Assistance at SBA Headquarters in Washington, DC. Each area office responded to declared disasters in a defined geographic area of the country primarily by providing loan services to disaster victims. Each area office was a full-service loan processing facility with electronic and paper-based systems operated and monitored by staff in each office. Those systems were not web-enabled or integrated. As a result, the Disaster area offices may have adopted varying standards and procedures for processing loans.

B. Office Reorganization

In 2004, following the introduction of a 5-year strategic plan and the development of a paperless, web-enabled loan processing system, known as the DCMS system, ODA began to study the best methods of program delivery given the benefits the new loan processing system would bring to bear. Following the year and a half study of ODA's program, its processes and organization, SBA decided to reorganize the office and realign its employees and space to operate more efficiently and better serve its customers, the disaster victims. The reorganization is substantially complete, and SBA aims to fully complete it by the end of fiscal year 2006. ODA is maintaining offices in its four current locations to take full advantage of the existing infrastructure in each location, and the existing personnel resources (the Niagara Falls, NY disaster area office relocated to Buffalo, NY). Those four disaster centers are: disaster assistance customer service center, disaster assistance processing and disbursement center, disaster assistance field operations center east, and disaster assistance field operations center west. There is a fifth center located in Herndon, VA which serves as a personnel and administrative services center for the other disaster centers. As part of the reorganization, SBA is also implementing DCMS, a fully web-enabled technology, which allows ODA to process disaster loans anywhere at any time. DCMS ensures continuity of ODA's loan processing capabilities even if operations at the disaster assistance processing and disbursement center in Ft. Worth are disrupted.

C. Five Disaster Centers

The location of each center and general descriptions of their functions are listed below. Each center will be managed by a Center Director who reports to the Deputy Associate Administrator for Disaster Assistance at SBA Headquarters.

1. Customer Support Center

The customer support center located in Buffalo, NY performs the following functions: tele-registration (referrals from Federal Emergency Management Agency (FEMA)), mail-out (distribution of application materials to disaster victims), and customer support (telephonic and electronic contact for disaster victims nationwide to obtain application and loan status information). This will eliminate the need for four independent phone banks, four sets of technology supporting them, and four sets of customer support personnel operating them.

2. Processing and Disbursement Center

All loan processes, including application entry and scanning, loan processing, and loan closing and disbursement, previously performed independently by the four area offices, are now performed in one central processing and disbursement center located in Ft. Worth, TX. SBA anticipates that this new approach will achieve efficiencies of scale, consistency in the loan processing, closing and disbursement functions, consistent application of SBA policy, and the elimination of varying processing approaches and standards.

3. Field Operations Centers East and West

Field operations centers east and west, located in Atlanta, GA and Sacramento, CA respectively, manage and coordinate ODA field response and all field resources necessary to implement the disaster loan program. They also respond to congressional inquiries and perform public information functions. Additionally, they respond to requests by State governors for SBA disaster declarations. Such requests are to be submitted to the field operations center serving the jurisdiction in which the disaster occurred. The addresses, phone numbers, and jurisdictions served by the field operations centers are published in the **Federal Register**. Establishing two field operations centers will result in greater efficiencies and economies of scale by stabilizing the workload that, due to the intermittent nature of disaster field work, had been variable and uneven under the old structure.

4. Personnel and Administrative Support Center

This center, located in Herndon VA, provides administrative, personnel, and administrative law functions for the Disaster Assistance Program. It also houses the Disaster Credit Management System operations center and the Field Inspection Team headquarters. This center consolidates functions which were performed separately in the four areas, thus leading to greater efficiencies and economies of scale.

D. Amendments to SBA Regulations

SBA is amending Part 101 to name and list the five disaster centers, four that serve the public, and one that provides personnel, administrative, computer operations, and other services to the other disaster centers. SBA is amending Part 123 by making conforming amendments to existing regulations on SBA's Disaster Loan Program.

E. Direct Final Rule

SBA is publishing this regulation as a direct final rule because it believes the rule is non-controversial since the changes are largely transparent to the public and few external parties will be affected. In addition, the costs of the transformation are expected to be offset by the savings in overhead and travel costs. SBA believes that this rule will not elicit any significant adverse comments.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch.35)

This direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a ''significant regulatory action'' under Executive Order 12866.

This direct final rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or preemptive effect.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is only changing the designations of the agency's disaster offices and making conforming amendments to existing regulations on SBA's Disaster Loan Program.

List of Subjects in 13 CFR Parts 101 and 123

13 CFR Part 101

Authority delegations, Organization and function.

13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

■ For the reasons stated in the preamble, the Small Business Administration amends parts 101 and 123 of title 13 of the Code of Federal Regulations as follows:

PART 101—ADMINISTRATION

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 552 and App. 3, secs. 2, 4(a), 6(a), and 9(a)(1)(T); 15 U.S.C. 633, 634, 687; 31 U.S.C. 6506; 44 U.S.C. 3512; E.O. 12372 (July 14, 1982), 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by E.O. 12416 (April 8, 1983), 48 FR 15887, 3 CFR, 1983 Comp., p. 186.

■ 2. Revise § 101.104(d) to read as follows:

§ 101.104 What are the functions of SBA's field offices?

* * * * *

(d) Disaster assistance offices. The Office of Disaster Assistance maintains five permanent field offices which are named according to the particular functions they perform in the disaster loan making process. The office names are: Disaster Assistance Customer Service Center, Disaster Assistance Processing and Disbursement Center, Disaster Assistance Field Operations Center East, Disaster Assistance Field Operations Center West, and the Disaster Assistance Personnel and Administrative Services Center. Each office is managed by a Center Director who reports to the Deputy Associate Administrator for Disaster Assistance. The offices provide loan services to victims of declared disasters, or support the efforts of the other offices to do so. Temporary disaster offices may be established in areas where disasters have occurred.

* * * * *

PART 123—DISASTER LOAN PROGRAM

■ 3. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739; and Pub. L 106–50, 113 Stat. 245

■ 4. Amend § 123.3 by revising paragraphs (a)(3)(iii) and (a)(5) to read as follows:

§ 123.3 How are disaster declarations made?

(a) * * *

(3) * * *

(iii) The Governor of the State in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA (OMB Approval No. 3245–0121). This request should be delivered to the Disaster Assistance Field Operations Center serving the jurisdiction within 60 days of the date of the disaster. The addresses, phone numbers, and jurisdictions served by the field operations centers are published in the **Federal Register**.

(4) * * *

(5) SBA makes an economic injury declaration in reliance on a state certification that at least five small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivision in which the disaster occurred, and must be delivered (with supporting documentation) to the Disaster Assistance Field Operations Center serving the jurisdiction within 120 days of the disaster occurrence. * * *

■ 5. Amend § 123.13 by revising paragraphs (c), (e), and (f) to read as follows:

§ 123.13 What happens if my loan application is declined?

* * * * *

(c) Any request for reconsideration must be received by SBA's Disaster Assistance Processing and Disbursement Center (DAPDC) within six months of the date of the decline notice. After six months, a new loan application is required.

(d) * * *

(e) If SBA declines your application a second time, you have the right to appeal in writing to the Director, Disaster Assistance Processing and Disbursement Center. All appeals must be received by the processing center within 30 days of the decline action. Your request must state that you are appealing, and must give specific reasons why the decline action should be reversed.

(f) The decision of the Director, DAPDC, is final unless:

(1) The Director, DAPDC, does not have the authority to approve the requested loan;

(2) The Director, DAPDC, refers the matter to the AA/DA; or

(3) The AA/DA, upon a showing of special circumstances, requests that the Director, DAPDC, forward the matter to him or her for final consideration. Special circumstances may include, but are not limited to, policy considerations or alleged improper acts by SBA personnel or others in processing the application.

Dated: October 24, 2006.

Steven C. Preston,

Administrator.

[FR Doc. E6–18246 Filed 10–30–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM356; Special Conditions No. 25–334–SC]

Special Conditions: Boeing Model 737–700 IGW Airplane (BBJ, S/N 34683); Certification of Cooktops

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA issues these special conditions for the Boeing Model 737–

700 IGW airplane (BBJ serial number 34683). This airplane, as modified by PATS Aircraft LLC, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification consists of installing an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 13, 2006. We must receive your comments by December 15, 2006.

ADDRESSES: You may mail or deliver comments on these special conditions in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM356, 1601 Lind Avenue SW., Renton, Washington, 98057–3356. You must mark your comments: Docket No. NM356.

FOR FURTHER INFORMATION CONTACT: John Shelden, FAA, Airframe and Cabin Safety Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2785; facsimile (425) 227–1100; e-mail *john.shelden@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment for these special conditions is impracticable because this procedure would significantly delay certification and delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. We therefore find that good cause exists for making these special conditions effective upon issuance. However, we invite interested persons to take part in this rulemaking by sending written comments. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 31, 2005, PATS Aircraft LLC applied for a supplemental type certificate for the Boeing Model 737–700 IGW airplane (BBJ serial number 34683). The Boeing Model 737–700 IGW airplane is one of the Boeing Business Jet (BBJ) variants of Model 737 airplanes. It is a large transport category airplane powered by two CFM 56 engines, with a maximum takeoff weight of 171,000 pounds. The modified Boeing Model 737–700 IGW airplane, BBJ serial number 34683, operates with a 2-pilot crew, up to 4 flight attendants, and can hold up to 18 passengers.

The modification consists of installing an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, we issue these special conditions.

Type Certification Basis

Under the provisions of § 21.101, PATS Aircraft LLC must show that the 737–700 IGW, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in A16WE are part 25, as amended by Amendments 25–1 through 25–77, with reversions to earlier amendments, voluntary compliance to later amendments, special conditions, equivalent safety findings, and exemptions listed in the type certificate data sheet.

If the Administrator finds that the applicable airworthiness regulations (14 Code of Federal Regulations (CFR) part 25, as amended) do not contain adequate or appropriate safety standards for the 737–700 IGW because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 737–700 IGW must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

As noted earlier, the modification of the Boeing Model 737–700 IGW airplane, BBJ serial number 34683, will incorporate a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. So this system is considered to be a novel or unusual design feature.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards presented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food. These may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious implications for passenger and airplane safety if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. Use of an open flame cooktop (employing natural gas, for example) is beyond the scope of these special conditions and would require separate rulemaking action. The requirements identified in these special conditions are in addition to those considerations

identified in Advisory Circular (AC) 25–10, ''Guidance for Installation of Miscellaneous Non-required Electrical Equipment,'' and those in AC 25–17, ''Transport Airplane Cabin Interiors Crashworthiness Handbook.'' The intent of these special conditions is to provide a level of safety consistent with that on similar airplanes without cooktops.

Applicability

As discussed above, these special conditions are applicable to the 737–700 IGW airplane, BBJ serial number 34683, modified by PATS Aircraft LLC. Should PATS Aircraft LLC apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, because the certification date for the subject modification to the Boeing Model 737–700 IGW is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 737–700 IGW BBJ airplane, BBJ serial number 34683, modified by PATS Aircraft LLC:

Cooktop Installations With Electrically-Powered Burners

1. A design feature must be installed to minimize potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Examples of such safety features are conspicuous burner-on indicators, physical barriers, or handholds. Conditions of turbulence must be considered.

2. The design must include sufficient means to restrain cookware and representative contents, such as soups or sauces, while in place on the cooktop, from effects of flight loads and turbulence.

(a) Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware identified for use with the cooktop.

(b) Restraints must be designed to be easily used and effective in service. The cookware restraint system should also be designed so it cannot be easily disabled, thus rendering it unusable.

(c) Placarding must be installed that prohibits use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed that prohibits use of cooktops (power on any burner) during taxi, takeoff, and landing (TTL).

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop caused by materials or grease inadvertently coming in contact with the burners.

Note: Two acceptable means of complying with this requirement are as follows:

• Placarding must be installed that prohibits power on any burner when the cooktop is unattended. This would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered. A fire detector which provides an audible warning in the passenger cabin must be installed in the vicinity of the cooktop. In addition, a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. A fire on or around the cooktop must not block access to the extinguisher. One of the fire extinguishers required by § 25.851 may be used to satisfy this requirement if the total complement of extinguishers can be evenly distributed throughout the cabin. If this is not possible, then the extinguisher in the galley area would be additional.

or

• An automatic, thermally-activated fire suppression system must be installed to extinguish a fire on the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in occupied areas. The fire suppression system must have a manual override. Automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. Galley surfaces surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials complying with flammability requirements of 14 CFR part 25, Appendix F part III. This requirement is in addition to the flammability standards typically required of these galley surface materials. During selection of these materials, consideration must also be given to ensuring that the flammability characteristics of the materials will not be adversely affected by cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from accumulation of flammable oils. These procedures and time intervals must be included in the Instructions for Continued Airworthiness (ICA). The ventilation system ducting must be protected by a flame arrestor.

Note: The applicant may find additional useful information in ''Air Conditioning Systems for Subsonic Airplanes,'' Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, dated August 1, 1991.

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent creation of a slipping hazard to occupants and will not lead to loss of structural strength due to airplane corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided both in the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

10. A readily deployable cover must be provided to cover the cooktop during taxi, takeoff, and landing (TT&L) operation. Deployment of the cover must automatically shut off power to the cooktop.

Issued in Renton, Washington, on October 13, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18281 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30520; Amdt. No. 3191]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 31, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 31, 2006.

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

For Examination—

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 20, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC number	Subject
10/05/06	IN	Indianapolis	Indianapolis Intl	6/2576	ILS or LOC Rwy 14 Amdt 5.
10/07/06	WY	Big Piney	Big Piney-Marbleton	6/2781	VOR Rwy 31, Amdt 3B.
10/11/06	AL	Mobile	Mobile Downtown	6/3096	RNAV (GPS) Rwy 18, Orig.
10/11/06	AR	Pine Bluff	Grider Field	6/3054	RNAV (GPS) Rwy 18 Orig.
10/11/06	FL	Boca Raton	Boca Raton	6/3070	RNAV (GPS) Rwy 5, Orig.
10/11/06	IN	Evansville	Evansville Regional	6/3059	ILS or LOC Rwy 4, Amdt 1A.
10/11/06	NY	White Plains	Westchester County	6/3148	This Notam Replaces FDC 6/2223 Published in TL06–23. ILS Rwy 34, Amdt 3B.
10/11/06	OH	Lorain/Elyria	Lorain County Regional	6/3162	ILS Rwy 7, Amdt 6A.
10/11/06	PA	Meadville	Port Meadville	6/3157	LOC Rwy 25, Amdt 5.
10/11/06	WV	Huntington	Tri-State/Milton J. Ferguson	6/3071	ILS or LOC Rwy 12, Amdt 11A.
10/12/06	WA	Spokane	Spokane Intl	6/3220	ILS or LOC Rwy 21, Amdt 20.
10/12/06	WA	Spokane	Spokane Intl	6/3222	ILS Rwy 21 (Cat III), Amdt 20.
10/12/06	WA	Spokane	Spokane Intl	6/3224	ILS Rwy 21(Cat II), Amdt 20.
10/13/06	FM	Kosrae Island	Kosrae	6/3242	RNAV (GPS) Rwy 5, Orig.
10/13/06	FM	Kosrae Island	Kosrae	6/3241	RNAV (GPS) Rwy 23, Orig.
10/13/06	TN	Somerville	Fayette Co	6/3413	NDB Rwy 19, Amdt 1.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3645	ILS Rwy 6L, Amdt 11.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3646	ILS or LOC Rwy 24R, Amdt 23.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3647	ILS or LOC Rwy 25R, Amdt 15.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3648	ILS or LOC Rwy 24L, Amdt 24.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3720	ILS Rwy 16R, Amdt 10A.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3721	LOC 2 Rwy 16R, Amdt 6B.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3722	VOR or GPS–D, Amdt 6.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3723	LOC/DME BC Rwy 34L, Amdt 1B.
10/18/06	FL	Marathon	The Florida Keys Marathon	6/3849	NDB or GPS Rwy 7, Amdt 3A.
10/18/06	NY	Elmira/Corning Regional	Elmira	6/3847	ILS Rwy 24, Amdt 18A.

[FR Doc. E6–18085 Filed 10–30–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM06–7–000; Order No. 686]

Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates

October 19, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its blanket certification regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority. The Commission is expanding the types of natural gas projects permitted under blanket certificate authority and increasing the cost limits that apply to blanket projects. In addition, the Commission clarifies that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service. Rather than rely on the more demanding process of submitting an application under section 7(c) of the Natural Gas Act for certificate authorization for every project, the revised regulations will allow interstate natural gas pipelines to employ the streamlined blanket certificate procedures for larger projects and for a wider variety of types of projects, thereby increasing efficiencies, and decreasing time and costs, associated with the construction and maintenance of the nation's natural gas infrastructure.

DATES: The rule will become effective January 2, 2007.

FOR FURTHER INFORMATION CONTACT:

Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *gordon.wagner@ferc.gov.* (202) 502–8947.

Michael McGehee, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *michael.mcgehee@ferc.gov.* (202) 502–8962.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On June 16, 2006, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[1] In the NOPR, the Commission proposed to amend its Part 157, Subpart F, regulations to expand the scope and scale of activities that

[1] 71 FR 36276 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 (2006); 115 FERC ¶ 61,338 (2006).

may be undertaken pursuant to blanket certificate authority and clarified that existing Commission policies permit natural gas companies to charge different rates to different classes of customers. This Final Rule considers comments submitted in response to the NOPR, and as a result, makes certain relatively minor modifications to the regulatory revisions described in the NOPR, and affirms the clarification regarding rate treatment described in the NOPR.

I. Background

2. A natural gas company must obtain a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act (NGA) to construct, acquire, alter, abandon, or operate jurisdictional gas facilities or to provide jurisdictional gas services. Once issued a case-specific NGA section 7(c) certificate, a gas company may also obtain a blanket certificate under NGA section 7(c) and Part 157, Subpart F, of the Commission's regulations to construct, acquire, alter, or abandon certain types of facilities without the need for further case-by-case certificate authorization for each particular project.[2] Currently, blanket activities are limited to a maximum cost of $8,200,000 per project undertaken without prior notice (also referred to as self-implementing or automatic authorization projects) and $22,700,000 per project undertaken subject to prior notice.[3] Blanket certificate authority only applies to a restricted set of facilities and services, and currently does not extend to mainlines, storage field facilities, and facilities receiving gas from a liquefied natural gas (LNG) plant or a synthetic gas plant.

3. This Final Rule expands the scope of activities that can be undertaken pursuant to blanket authority by (1) increasing the project cost limit to $9,600,000 for an automatic authorization project and $27,400,000 for a prior notice project[4] and (2) expanding the types of facilities that may be acquired, constructed, modified, replaced, abandoned, and operated under blanket certificate authority to include mainline facilities, certain LNG and synthetic gas facilities, and certain storage facilities. In addition, the Commission clarifies that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

II. Notice and Comment

A. Petition To Expand the Blanket Certificate Program and Clarify Criteria Defining Just and Reasonable Rates

4. On November 22, 2005, the Interstate Natural Gas Association of America (INGAA) and the Natural Gas Supply Association (NGSA) jointly filed a petition under § 385.207(a) of the Commission's regulations proposing that the blanket certificate provisions be expanded to include mainline facilities, LNG takeaway facilities, and certain underground storage field facilities which are currently excluded from the blanket certificate program, and that the cost limits for all categories of blanket projects be raised. Petitioners also argue in favor of preferential rate treatment for ''foundation shippers,'' *i.e.*, customers that sign up early for firm service and thereby establish the financial foundation for a new project, and seek assurance that providing customers that commit early to a proposed project a more favorable rate than customers that seek service later will not be viewed as unduly discriminatory.

5. Notice of the INGAA/NGSA petition was published in the **Federal Register** on December 9, 2005,[5] and comments on the petition were filed by the American Gas Association (AGA); American Public Gas Association (APGA); Anadarko Petroleum Corporation (Anadarko); Devon Energy Corporation (Devon); Duke Energy Gas Transmission Corporation (Duke); Enstor Operating Company, LLC (Enstor); Honeoye Storage Corporation (Honeoye Storage); Illinois Municipal Gas Agency (Illinois Municipal); Independent Petroleum Association of America (IPAA); Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan); NiSource Inc. (NiSource); Process Gas Consumers Group (Process Gas Consumers); Public Service Commission of New York (PSCNY); and Sempra Global (Sempra).

B. Notice of Proposed Rulemaking

6. After consideration of the petition and comments thereto, the Commission issued a NOPR that (1) proposed adopting the petitioners' requested regulatory revisions, with relatively minor modifications, and (2) clarified that the petitioners' hypothetical tiered rate structure for a new project could be accepted under the Commission's current policies. Notice of the NOPR was published in the **Federal Register** on June 29, 2006.[6] Comments on the NOPR were filed by the AGA; APGA; Boardwalk Pipeline Partners, LP (Boardwalk); Consolidated Edison Company of New York, Inc. (Con Ed) jointly with Orange and Rockland Utilities, Inc. (Orange and Rockland); Dominion Transmission, Inc., Dominion Cove Point LNG, LP, and Dominion South Pipeline Company, LP (Dominion); Duke; HFP Acoustical Consultants Inc. (HFP Acoustical); INGAA; IPAA; NGSA; Process Gas Consumers; Sempra; and Williston Basin Interstate Pipeline Company (Williston). Further comments were filed by INGAA jointly with NGSA, and by AGA.

III. Discussion

7. The blanket certificate program was designed to provide an administratively efficient means to authorize a generic class of routine activities, without subjecting each minor project to a full, case-specific NGA section 7 certificate proceeding. In 1982, in instituting the blanket certificate program, the Commission explained the new program as follows:

> [T]he final regulations divide the various actions that the Commission certificates into several categories. The first category applies to certain activities performed by interstate pipelines that either have relatively little impact on ratepayers, or little effect on pipeline operations. This first category also includes minor investments in facilities which are so well understood as an established industry practice that little scrutiny is required to determine their compatibility with the public convenience and necessity. The second category of activities provides for a notice and protest procedure and comprises certain activities in which various interested parties might have a concern. In such cases there is a need to

[2] Certain activities are exempted from the certificate requirements of NGA section 7(c). For example, 18 CFR 2.55 in the Commission's regulations exempts auxiliary installations and the replacement of physically deteriorated or obsolete facilities, and Part 284, Subpart I, of the regulations provides for the construction and operation of facilities needed to alleviate a gas emergency.

[3] These are the current cost limits for calendar year 2006. Cost limits are adjusted annually. *See* 18 CFR 157.208(d), Table I (2006), as updated. As noted in the NOPR, in response to the impacts of hurricanes Katrina and Rita, these cost limits have been temporarily doubled for blanket projects that are built and placed into service between November 2005 and February 2007 to increase access to gas supplies. In addition, blanket certificate authority has been temporarily extended to cover facilities that would otherwise require case-specific authorization, namely, an extension of a mainline; a facility, including compression and looping, that alters the capacity of a mainline; and temporary compression that raises the capacity of a mainline. *See Expediting Infrastructure Construction To Speed Hurricane Recovery,* 113 FERC ¶ 61,179 (2005) and 114 FERC ¶ 61,186 (2006).

[4] Upon the effective date of this Final Rule, these higher project cost limits will be substituted for the amounts that now appear for the current calendar year in 18 CFR 157.208(d), Table I, with these higher amounts then subject to the annual inflation adjustment.

[5] 70 FR 73232 (Dec. 9, 2005).

[6] 71 FR 36276 (June 26, 2006).

provide an opportunity for a greater degree of review and to provide for possible adjudication of controversial aspects. Activities not authorized under the blanket certificate are those activities which may have a major potential impact on ratepayers, or which propose such important considerations that close scrutiny and case-specific deliberation by the Commission is warranted prior to the issuance of a certificate.[7]

8. The Commission continues to apply the above criteria in an effort to distinguish those types of activities that may appropriately be constructed under blanket certificate authority from those projects that merit closer, case-specific scrutiny due to their potentially significant impact on rates, services, safety, security, competing natural gas companies or their customers, or on the environment. The Commission believes the regulatory revisions put in place by this Final Rule are consistent with the above-described rationale for and constraints on the blanket certificate program.

9. In addition, ''[u]nder section 7 of the NGA, pursuant to which the blanket certificate rule is promulgated,'' the Commission has ''an obligation to issue certificates only where they are required by the public convenience and necessity. The blanket certificate rules set out a class of transactions, subject to specific conditions, that the Commission has determined to be in the public convenience and necessity.'' [8] As discussed in the NOPR, and as further explained below, the Commission believes that the class of blanket-eligible transactions can be enlarged consistent with its statutory obligation to affirm that each new project or service is required by the public convenience and necessity.

A. Proposed Regulatory Revisions, Comments, and Commission Response

10. The Commission proposes to expand the scope of blanket certificate activities to include facilities and services that have heretofore been excluded from the blanket program and to expand the scale of blanket certificate activities by raising the current project cost limits.

B. Expanding Blanket Authority to Cover Currently Excluded Facilities

11. The Final Rule adds §§ 157.210, .212, and .213 to include, respectively, certain mainline, LNG and synthetic gas, and storage facilities within the blanket certificate program. As discussed in the NOPR, these facilities were initially barred from the blanket program out of concern that their cost and operation could adversely impact existing customers' rates and services. These concerns remain valid, and in addition, there has been increased attention to the environmental, safety, and security implications of all natural gas facilities. To ensure these matters receive appropriate review, all projects involving the additional types of facilities now permitted under the expanded blanket certificate program (with the exception of the remediation and maintenance of underground storage field facilities) will be subject to the prior notice provisions of the regulations regardless of their estimated costs. As explained in the NOPR, the Commission expects that by requiring prior public notice for blanket projects involving these previously excluded facilities, and by providing for more information to be included in notices to affected landowners and the public, and by providing additional time to assess proposed blanket projects, the Commission, affected landowners, and others will be afforded a reasonable opportunity to review the potential impacts of proposed projects prior to construction.

12. APGA asks that the Commission affirm these measures will ensure adequate staff review of prior notice submissions. The Commission expects that the revised regulations will enable staff to make a meaningful assessment of proposed blanket projects—and as appropriate, protest pursuant to § 157.205(e) of the Commission's regulations—prior to a project going forward.

1. Section 157.210, Mainline Natural Gas Facilities

13. The Final Rule adds § 157.210 to allow blanket certificate holders to acquire, construct, modify, replace, and operate mainline gas facilities. The Final Rule makes the following modifications. At the end of the first sentence of this section, the phrase ''natural gas mainline facilities,'' is qualified by adding ''including compression and looping, that are not eligible facilities under § 157.202(b)(2)(i).'' This clarifies that blanket certificate authority can be employed for mainline projects that include compression and loop line facilities, and also clarifies, in response to INGAA's request, that this new section does not displace, but is in addition to, the existing provisions which state that certain mainline facilities are eligible to be replaced or rearranged under blanket authority. In addition, the reference in the NOPR to the authority to ''abandon'' is removed, since as Williston observes, blanket abandonment provisions are described in § 157.216 of the Commission's regulations. Instead, a cross-reference to § 157.210 will be added to § 157.216, so that the blanket abandonment authority and procedure now in place will be extended to new mainline facilities and services.

14. INGAA, Duke, and Dominion insist there is no need for prior notice for mainline projects that come under the automatic authorization cost limit, asserting that the Commission already has the capability to monitor mainline projects for adverse impacts, abuses, and segmenting by means of a review of annual reports and post-construction audits. On the other hand, APGA and IPAA argue in favor of prior notice for all § 157.210 mainline activity, regardless of cost.

15. Although the Commission is comfortable with its capability to assess and monitor the variety of activities currently included within the blanket certificate program, this Final Rule draws into the blanket program facilities which heretofore have been deliberately excluded due to the expectation that the limited regulatory oversight provided under the blanket program would be inadequate to properly review such facilities. Oversight via review of annual reports and post-construction audits, as suggested in comments, would only identify transgressions after the fact, whereas prior notice functions as a preventive measure. Given the Commission's lack of experience under the blanket program in supervising mainline, LNG and synthetic gas, and storage facility projects, the NOPR reasoned it would be prudent to provide prior notice for all projects involving these newly blanket-enfranchised facilities. The Commission affirms that reasoning here, with an exception described below for certain storage facilities.

16. In the NOPR, in response to a query by Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan), the Commission stated its expectation that the proposed regulatory revisions would provide certificate holders with the

[7] 47 FR 24254 (June 4, 1982).

[8] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. ¶ 30,665 at 31,554 (1985), *vacated and remanded*, *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. & Regs. ¶ 30,761 (1987), *remanded*, *American Gas Association v. FERC*, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52344 (Dec. 21, 1989), FERC Stats. & Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part and remanded in part*, *American Gas Association v. FERC*, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S.Ct. 957 (1991).

option to construct mainline facilities under blanket certificate authority. This Final Rule does so. Accordingly, this rule renders moot Kinder Morgan's and Northern Natural Gas Company's joint petition in Docket No. CP06–418–000 for a temporary waiver of the blanket certificate program's exclusion of mainline facilities pending revision of the blanket regulations to permit the construction of mainline projects.[9] As of the effective date of this rule, mainline facilities may be constructed pursuant to a project sponsor's blanket certificate authority, provided the proposed facilities comply with the cost limits and other requirements of the blanket certificate program.

2. Section 157.212, LNG and Synthetic Natural Gas Facilities

17. The Final Rule adds § 157.212 to allow certificate holders to acquire, construct, modify, replace, and operate facilities used to transport LNG or synthetic gas. The Final Rule removes the reference in the NOPR to the authority to ''abandon,'' and instead adds a cross-reference to the blanket abandonment authority described in § 157.216 of the Commission's regulations. In addition, § 157.212 will be revised to clarify that it applies to facilities that transport a mix of synthetic and natural gas and to facilities that transport exclusively revaporized LNG.[10]

18. As was the case regarding the issue of prior notice for mainline facilities, comments both favor and oppose applying prior notice to all LNG and synthetic gas facilities that are now newly subject to authorization under the blanket program. In accord with the above discussion regarding mainline facilities, the Commission will retain the prior notice requirement. In the NOPR, the Commission added that automatic authorization was unsuited to LNG and synthetic gas facilities because these projects raised fact-specific issues of safety, security, and gas interchangeability.

19. In opting for prior notice, INGAA contends the Commission is being ''unduly cautious,'' since ''LNG supplies are not new to the natural gas industry and have been flowing into the U.S. grid for a long time now.'' [11] INGAA's observation, while not wrong, overlooks the difficulties developers, producers, pipelines, LDCs, and gas consumers have encountered in trying to reach consensus on national natural gas quality and interchangeability standards. The concerted effort by representatives of these sectors of the gas industry to establish such standards, ongoing since 2004, was prompted by the prospect of increasing supplies of LNG, leading the industry and the Commission to consider whether revaporized LNG could contribute to the physical deterioration of existing gas lines and whether the substitution of one gaseous fuel for another in a combustion application could materially change operational safety, efficiency, performance, or air pollution emissions. In June 2006, the Commission denied an NGSA petition to establish natural gas quality and interchangeability standards [12] and issued a policy statement declaring its intent to address disputes over gas quality and interchangeability on a case-by-case basis.[13] Given the potential impact that a change in the makeup of a longstanding gas supply profile could have, the Commission believes that to the extent requiring prior notice for § 157.212 facilities may be characterized as cautious, caution is in order. Thus, the Commission will adopt the prior notice requirement for all LNG and synthetic gas facilities.[14]

20. The NOPR states that ''blanket certificate authority will not apply to the outlet pipe of an LNG or synthetic gas plant, but only to those facilities that attach to the directly interconnected pipe.'' [15] APGA endorses this approach. INGAA, NGSA, Duke, and Dominion do not, and advocate extending blanket certificate authority to include takeaway lateral lines that connect directly to existing LNG terminals. AGA seeks clarification on this point. NGSA asserts that if a new lateral from an existing LNG terminal does not require modifying the terminal to accommodate the new lateral, the new lateral should not be subject to the mandatory prefiling specified in § 157.21 of the Commission's regulations. Dominion goes further, and recommends enlarging the blanket certificate program to include improvements and modifications to existing LNG terminals and LNG storage facilities that do not alter the facility's capacity. Duke goes further still, and claims that ''if the Commission continues to believe that it is necessary to evaluate an LNG terminal and take-away pipeline in tandem, there is no reason why such pipeline facilities could not be both constructed pursuant to blanket authority and evaluated in connection with the construction of a new LNG terminal or expansion of an existing LNG terminal.'' [16]

21. The Commission views Duke's suggestion as incompatible with the statutory and regulatory requirements applicable to LNG terminal facilities. In the NOPR, the Commission explained that:

> LNG plant facilities are not within the class of minor, well-understood, routine activities that the blanket certificate program is intended to embrace; LNG plant facilities necessarily require a review of engineering, environmental, safety, and security issues that the Commission believes only can be properly considered on a case-by-case basis.[17] [Thus, b]ecause an LNG terminal and the facilities that attach directly to it are interdependent—inextricably bound in design and operation—a terminal and its takeaway facilities must be evaluated in tandem; both merit a similar degree of regulatory scrutiny.'' [18]

22. In view of the complexity of the issues raised by LNG terminals, § 157.21 requires that proposals to construct a new LNG terminal, or to make certain modifications to an existing LNG terminal, be subject to a mandatory 180-day prefiling procedure. The 180-day prefiling procedure conflicts with the expedited nature of the blanket certificate program. Thus, facilities subject to mandatory prefiling cannot be authorized under the blanket certificate program.

23. For example, in the case of a planned, but not yet authorized, LNG terminal, if the facilities that attach directly to the new terminal are ''related jurisdictional natural gas facilities,'' as defined by § 153.2(e)(1) of the Commission's regulations, they must be considered in conjunction with the LNG terminal in a 180-day mandatory prefiling procedure. In the case of an existing LNG terminal, if the construction or modification of facilities that attach directly to the terminal will result in modifications to the terminal, and those modifications to the terminal

[9] The Commission will issue a separate notice to dismiss Kinder Morgan's and Northern Natural Gas Company's petition in Docket No. CP06–418–000.

[10] The Commission's jurisdiction over the interstate transportation of natural gas does not extend to facilities that transport exclusively synthetic gas. See, *e.g.*, *Henry v. FPC*, 513 F.2d 395 (D.C. Cir. 1975).

[11] INGAA's Comments at 9 (Aug. 25, 2006).

[12] 115 FERC ¶ 61,327 (2006).

[13] 115 FERC ¶ 61,325 (2006).

[14] In view of the issues that have arisen in the Commission proceeding regarding gas quality and interchangeability standards, Duke is incorrect in stating that ''there are no construction, environmental, operational, or safety considerations that distinguish regasified LNG pipelines from other natural gas pipelines.'' Duke's Comments at 9 (Aug. 25, 2006).

[15] 71 FR 36276 at 36279 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,876 (2006); 115 FERC ¶ 61,338 at P 28 (2006).

[16] Duke's Comments at 10 (Aug. 25, 2006).

[17] 71 FR 36276 at 36279–80 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,877 (2006); 115 FERC ¶ 61,338 at PP 29–30 (2006).

[18] *Id.*

are subject to mandatory prefiling under § 157.21(e)(2), then the facilities that attach directly to the terminal are ''related jurisdictional natural gas facilities'' and must be considered along with the terminal modifications as part of a mandatory 180-day prefiling procedure. Because ''related jurisdictional natural gas facilities'' are to be reviewed in tandem with LNG terminals in a 180-day prefiling, these facilities are excluded from the blanket certificate program.

24. However, blanket certificate authority can be applied to facilities that attach directly to an existing LNG terminal if the construction and operation of the attached facilities will not involve any modifications to the terminal, or if there are modifications to the terminal, they are not significant modifications that trigger the 180-day mandatory prefiling process. In view of this latter category of facilities, the Commission qualifies its description in the NOPR on the applicability of the blanket program. Provided the construction and operation of facilities that attach directly to an existing LNG terminal do not involve modifications to the terminal that result in a mandatory prefiling process, blanket certificate authority extends to such facilities.

25. Sempra complains that an existing blanket certificate holder, in seeking to build a pipeline to attach to an LNG terminal, would have a competitive advantage over a new entrant compelled to seek case-specific authority. Sempra asks the Commission to preclude any project sponsor from using blanket certificate authority to gain a timing advantage over a new entrant in seeking to serve the same LNG supply source or market.

26. As discussed above, a new line to a new LNG terminal could not be built under the expanded blanket certificate authority, and depending on circumstances, neither could a new line to an existing LNG terminal. That notwithstanding, the Commission acknowledges that, to the extent proceeding under the blanket program provides an expedited authorization compared to a case-specific applicant, new entrants could be placed at a competitive disadvantage. However, the Commission notes that any timing-related advantage is diminished because a blanket-eligible line interconnecting directly with an LNG terminal will be subject to prior notice, and thus to protest, and an unresolved protest would cause the prior notice blanket application to be treated as an application for case-specific NGA section 7(c) authorization.[19] Further, while this Final Rule increases cost limits under the blanket certificate regulations, the cost limits nevertheless will continue to ensure that blanket authority extends only to relatively modest projects; hence, there would not necessarily be a substantial disparity in time in building under a blanket certificate and obtaining case-specific authorization for a modest proposal. The Commission concludes that the benefit the blanket certificate program provides in terms of administrative efficiency and cost savings outweigh any accompanying market distortion. Accordingly, Sempra's request to selectively revoke blanket certificate authority is denied.

3. Section 157.213, Underground Storage Field Facilities

27. The Final Rule adds § 157.213 to allow certificate holders to acquire, construct, modify, replace, and operate certain underground storage facilities. As with § 157.210 and § 157.212, § 157.213 is revised to remove the reference in the NOPR to the authority to ''abandon,'' and instead a cross-reference is added to the blanket abandonment authority described in § 157.216 of the Commission's regulations. The Commission will further revise this section as described below.

28. Comments again both favor and oppose applying prior notice to all underground storage projects. However, in this instance, the Commission finds it appropriate to permit automatic authorization for certain types of storage projects. Dominion contends that automatic authorization should be allowed for storage projects limited to remediation and maintenance, on the grounds that such activities have little impact on customers or operations compared to projects to improve a storage facility. The Commission concurs and will provide for automatic authorization for storage remediation and maintenance activities under revised § 157.213(a).[20]

29. The NOPR states that ''the proposed expanded blanket certificate authority is not intended to include storage reservoirs that are still under development or reservoirs which have yet to reach their inventory and pressure levels as determined from their original certificated construction parameters.''[21] Dominion asks the Commission to extend blanket certificate authority to activities at existing storage reservoirs that are not operated at their originally certificated maximum inventory and projected performance levels. Dominion argues that unlike a new storage reservoir, reliable operational data are available for existing storage facilities, even if an existing field has yet to reach its certificated maximum capacity or original projected performance.

30. The Commission disagrees. While it may be true that reliable operational data are available for some existing fields that have yet to reach capacity, this is not always the case. Thus, the Commission does not believe that the blanket program, which permits an expedited and generic approval following a limited prior notice period, is the appropriate means to review and approve such projects. As stated in the NOPR, storage reservoirs that are still under development or reservoirs which have yet to reach their inventory:

> May or may not have reliable information available on geological confinement or operational parameters via data gathered throughout the life of a storage field, whereas new storage zones lack data collected over time on physical and operational aspects of a field. Therefore, for such facilities, the Commission finds it necessary to individually examine each reservoir to determine its potential operating parameters (capacity, cushion and working gas, operational limits, well locations, etc.) and to review data essential to understand and predict how modifications might affect the integrity, safety, and certificated parameters of the facility.[22]

31. Dominion questions whether the Commission needs an inventory verification study, shut-in reservoir pressures, and cumulative gas-in-place data, which would be required for blanket projects under proposed §§ 157.213(b)(7) and (8), since the Commission does not currently require submission of this information in case-specific NGA section 7(c) applications for storage projects.[23] Dominion requests the Commission either remove these information requirements or require the data described in §§ 157.213(c)(1) through (9) only to the extent necessary to demonstrate that the proposed project will not alter a storage

[19] *See* 18 CFR 157.205(f) (2006).

[20] The Commission consequently will modify 18 CFR 157.207 to include storage remediation and maintenance as an activity subject to the annual reporting requirements applicable to blanket projects undertaken pursuant to automatic authorization.

[21] 71 FR 36276 at 362782 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,880 (2006); 115 FERC ¶ 61,338 at P 43 (2006).

[22] *Id.*

[23] Note the regulatory revisions proposed in the NOPR as 18 CFR 157.213(*b*)(1) through (9), are codified in this Final Rule, and referred to hereafter, as 18 CFR 157.213(*c*)(1) through (9).

reservoir's total inventory, maximum pressure, or buffer boundaries.

32. Dominion is correct in observing that the information specified in §§ 157.213(c)(1) through (9) is not now required to be submitted under the existing regulations for case-specific certificate applications. However, the Commission considers this information necessary to make an informed decision on storage projects. Therefore, when this information is not included in a case-specific application, Commission staff, as a matter of routine practice, will request the data from the project sponsor. Section 157.213(c)(1) through (9) merely codifies this practice. Were this information not included in a prior notice filing, in all likelihood, Commission staff would request this data from the project sponsor, and in the event the response was incomplete or staff lacked time to assess the information by the conclusion of the prior notice period, staff could be compelled to protest the filing. Thus, to ensure the timely consideration of a prior notice request for a storage project, the filing must contain the information specified in §§ 157.213(c)(1) through (9). However, the Commission acknowledges that not all the information specified in §§ 157.213(c)(1) through (9) will be relevant in all cases, and will thus adopt Dominion's suggestion and qualify § 157.213(c) to state that the information requirements apply ''to the extent necessary to demonstrate that the proposed project will not alter a storage reservoir's total inventory, reservoir pressure, reservoir or buffer boundaries, or certificated capacity, including injection and withdrawal capacity.''

4. Blanket Project Cost Limits

33. The NOPR proposes raising the blanket certificate program's 2006 cost limits from $8,200,000 to $9,600,000 for each automatic authorization project and from $22,700,000 to $27,400,000 for each prior notice project. AGA, APGA, Con Ed, and Orange and Rockland urge the Commission not to raise the cost limits, cautioning that permitting more expensive projects would risk transforming the nature of the blanket program from one intended to cover small and routine construction activities into a program under which projects with potentially significant rate and environmental impacts could be built.[24] On the other hand, INGAA, NGSA, and pipelines propose to raise the cost limits to $16,000,000 for an automatic authorization project and $50,000,000 for a prior notice project, repeating the claim that construction costs have risen faster than the overall rate of inflation, and noting that these higher cost limits have been in effect since November 2005, as a post-hurricane relief measure, with no apparent adverse impact.

34. While gas project costs, including environmental compliance and public outreach, have trended up since 1982, so have the blanket program cost limits, almost doubling since 1982.[25] Since 1982, the Commission has relied on the Department of Commerce's GDP implicit price deflator as a measure to make annual adjustments to the blanket cost limits. In the NOPR, the Commission applied an alternative price tracker that is focused more narrowly on gas utility construction costs,[26] and as a result proposed to raise the cost limits to account for the discrepancy between the two different inflation indicators. The comments do not propose any alternative criteria or methodology for affirming or altering the blanket project cost limits.

35. INGAA and NGSA propose making permanent the doubled project cost limits that are currently in place temporarily.[27] However, the currently effective cost limits for the blanket certificate program were put in place temporarily to expedite construction of projects that would increase access to gas supply to respond to the damage to gas production, processing, and transportation brought about by hurricanes Katrina and Rita. In temporarily doubling blanket project cost limits, the Commission did not assess alternative inflation trackers or the costs associated with construction. Rather, the decision to expand the blanket program was based on the Commission's assessment of the damage done by the hurricanes and the magnitude of the effort that would be required to recover. There was no expectation that the temporary expansion of the blanket certificate program might be made permanent. If the blanket certificate program were expanded by approximately doubling the project cost limits as requested, the nature of the program would be changed such that the Commission could not be confident that far more expensive and extensive projects would not have adverse impacts on existing customers, existing services, competitors, landowners, or the environment. Accordingly, the Commission adopts an increase to $9,600,000 for each automatic authorization project and $27,400,000 for each prior notice project, and denies requests for a further increase at this time, other than annual inflation adjustments as provided for under § 157.208(d) of the Commission's regulations.

5. Rate Treatment for Blanket Project Costs

36. Blanket services are provided at a certificate holder's existing Part 284 rates, and blanket project costs are afforded the presumption that they will qualify for rolled-in rate treatment in a future NGA section 4 proceeding. Since blanket costs are presumed to be so small as to have no more than a de minimis rate impact, the proposal to increase cost limits calls this presumption into question. Therefore, the NOPR sought comment on whether to permit project sponsors the option of requesting an incremental rate for a particular blanket certificate project.

37. Commenters generally support this option, and note that applying an incremental rate to blanket projects would address the worry that existing customers might be made to subsidize new projects. INGAA argues that

[24] AGA stresses that if a certificate holder with a relatively modest rate base relies on blanket certificate authority to undertake additional construction, then even a project that falls well within the blanket cost limits has the potential to alter existing customers' rates. AGA, Con Ed, and Orange and Rockland speculate that in the case of a large company, a blanket project could have a disproportionate impact if project costs are assigned to a limited number of customers, *e.g.*, customers in a single rate zone. The Commission expects such concerns to be raised in protest to the notice of a proposed blanket project. If concerns regarding disproportionate rate impacts are not resolved, the proposed project and its rate impacts would then be treated as a case-specific NGA section 7(c) certificate proceeding. For blanket projects which qualify for automatic authorization, and as a result, do not require public notice prior to construction, concerns about rate treatment can be raised when the certificate holder seeks to roll in the cost of the automatically authorized project in a future NGA section 4 rate proceeding.

[25] In considering how to gauge project costs over time, the NOPR observed that recently ''certain project components—notably the price of steel pipe—have risen far faster than any measure of overall inflation. However, although steel prices have run up over the past several years, in looking back to 1982, there were periods during which steel prices fell substantially. Further, changing regulatory requirements and construction techniques, to which Petitioners attribute cost increases, do not always add to project costs, and may well contribute to cost reductions and efficiencies.'' 71 FR 36276 at 36283 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,884 (2006); 115 FERC ¶ 61,338 at P 57 (2006).

[26] The Commission employed the *Handy-Whitman Index of Public Utility Construction Costs, Trends of Construction Costs*, Bulletin No. 162, 1912 to July 1, 2005. In doing so, the Commission cautioned, and reiterates here, that even if it were possible to mirror 1982 costs to costs today, the dollar amounts would not reflect proportionate impacts on pipeline customers' rates, since in 1982 the commodity cost of gas was a significant portion of pipeline customers' merchant service rate, whereas today, gas sales costs are no longer bundled with transportation service costs.

[27] The current temporary increase in blanket cost limits expires on February 28, 2007.

because most incremental rate proposals are consensual, there is no need for the Commission to review an agreed-upon rate. To preclude existing customers from making unwarranted contributions to cover the costs of blanket projects, NGSA suggests requiring a project sponsor to file a tariff sheet in a limited NGA section 4 filing proposing an incremental rate, which the Commission will then act on as a normal tariff matter by accepting, rejecting, or suspending the rate at the end of the 30-day tariff notice period. In considering an incremental rate for a proposed blanket project, AGA, Con Ed, and Orange and Rockland urge the Commission to verify that each project will be consistent with the Policy Statement on New Facilities.[28]

38. Commenters present no compelling reason to modify the current practice of presuming, initially, that blanket project costs will qualify for rolled-in rate treatment, then evaluating the validity of this presumption, subsequently, in an NGA section 4 rate proceeding. Accordingly, for the time being, the Commission will continue to apply a presumption that blanket costs will qualify for rolled-in rate treatment. However, the Commission will revisit this question if there is evidence that the enlargement of the blanket certificate program to permit additional facilities and higher cost limits materially alters the manner in which project sponsors employ their blanket certificate authority or otherwise undermines the basis for the presumption of rolled-in rate treatment. Absent any such indication, the Commission hesitates to put in place a procedure to assess and approve initial rates for proposed blanket projects, since the additional time necessary to complete such a review will inevitably stretch the span between notice of a project and commencement of construction. To the extent practicable, the Commission aims to retain the benefit of an expedited project authorization available under the current blanket certificate program.

39. Emphasizing that revised blanket certificate regulations do not require project sponsors to demonstrate that a proposal conforms to the Policy Statement on New Facilities, Con Ed and Orange and Rockland request that the Commission (1) require that the prior notice of a proposed blanket project quantify impacts on existing customers and verify that the project will be fully functional without any additional construction; (2) allow protests to a blanket project that raise legitimate rate-related issues to be resolved in a case-specific proceeding; (3) extend the presumption of rolled-in rate treatment to a blanket project's costs only if the blanket project sponsor demonstrates the project will be fully subscribed or provide benefits to existing customers; and (4) find that the presumption favoring rolled-in rate treatment is rebutted if a blanket project is subsequently determined to be a segmented portion of a larger undertaking. Sempra suggests requiring project sponsors that undertake blanket storage projects and that have an existing cost-based recourse rate to discuss the rate implications of a proposed project in the prior notice of the project in order to demonstrate that existing customers will not subsidize the new facilities.

40. The Commission believes that the existing blanket certificate regulations are adequate to address the matters Con Ed, Orange and Rockland, and Sempra raise. The existing prohibition against segmentation is intended to preclude projects that would not be functional without additional construction. The rate impacts of a blanket project, while not now reviewed in advance, are considered in a future rate proceeding—and in the rate proceeding, the issues of subsidization and system benefits can be addressed. The regulations permit any interested person to protest a blanket project subject to the prior notice provisions; each protest, whether rate related or otherwise, will be considered on its merits on a case-by-case basis.

41. Con Ed, Orange and Rockland complain that the presumption favoring rolling in blanket costs is rarely rebutted.[29] APGA contends certificate holders resist filing rate cases ''due primarily to the fact that they are permitted under the current regime to over-recover their costs with impunity, [thus] by the time that most pipelines do file for increased rates, the cumulative dollar impact of the numerous no-notice and prior notice projects will be quite substantial, with no viable customer recourse.''[30] APGA requests the Commission compel certificate holders to file rate cases regularly, suggesting a three-year cycle.

42. The Commission acknowledges that in the vast majority of rate proceedings, the outcome affirms the presumption favoring rolling in blanket costs. The Commission notes that in rate proceedings, there is rarely any effort to rebut the presumption, which the Commission takes to be an indication of the legitimacy of the presumption. The Commission recognizes that a certificate holder is likely to weigh its own self interest when considering whether to initiate an NGA section 4 rate proceeding. However, if a company fails to initiate a rate proceeding in a timely manner, such that distortions over time have rendered its rates unjust and unreasonable, a complaint can be filed under NGA section 5.

C. Changes in the Notice Procedures, Environmental Compliance Conditions, and Reporting Requirements

43. In initiating the blanket certificate program in 1982, the Commission explained that § 157.206(a)(1) was intended to ''reserve the Commission's right to amend Subpart F so as to add, delete or modify the standard conditions and any procedural requirements * * * if changing circumstances or experience so warrant.''[31] In this case, increasing the scope and scale of the blanket certificate program increases the odds that projects authorized under the expanded blanket certificate program could have significant adverse impacts on the quality of the human environment. In view of this, the Commission proposed in the NOPR, and is adopting in this Final Rule, additional procedures and mitigation measures to adequately ensure against the potential for adverse environmental impacts due to the enlargement of the blanket certificate program. The current environmental requirements described in § 157.206(b), and the revisions to the environmental requirements implemented by this Final

[28] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *orders clarifying statement of policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000), *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

[29] The parties assert that the Commission is reluctant to reverse a presumption in favor of rolled-in rate treatment, citing *Transcontinental Gas Pipe Line Corp. (Transco),* 106 FERC ¶ 61,299 (2004) and 112 FERC ¶ 61,170 (2005). *Transco* did not focus on blanket project costs, but on the impact of a change in Commission rate policy, and how the changed policy should apply in an NGA section 4 proceeding to case-specific expansion projects built under the Commission's prior rate policy regime. In *Transco*, and in its policy statements, the Commission discussed its aspiration to provide as much up-front assurance as possible of how an expansion would be priced so that the pipeline and prospective shippers could make informed investment decisions. This holds true regardless of whether a project is constructed under blanket or case-specific authority; consequently, the Commission is reluctant to reverse either a predetermination or a presumption regarding future rate treatment. Nevertheless, in a subsequent NGA section 4 rate proceeding, the Commission may determine that its initial, provisional assessment of what the appropriate rate treatment would be was in error, and so reverse the predetermination or presumption.

[30] APGA's Comments at 8 (Aug. 25, 2006).

[31] *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234–A, 47 FR 38871 (Sept. 3 1982); FERC Stats. & Regs. ¶ 30,389 (1982).

Rule, apply to all projects authorized under the blanket certificate program.

1. Notification Requirements

a. Content of Landowner Notification

44. The NOPR proposed revising § 157.203(d)(2)(iv) to state that in the notice to affected landowners of a proposed project, the project sponsor include the most recent edition of the Commission pamphlet titled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' INGAA and Williston point out that the current edition of the pamphlet describes the Part 157, Subpart A, case-specific certificate process generally, but does not describe the Part 157, Subpart F, blanket program specifically, and suggest the pamphlet be revised or a separate pamphlet be prepared to cover the blanket certificate procedures. The Commission will adopt the latter approach, and to enhance administrative efficiency and ensure information remains up-to-date, rather than a pamphlet, the Commission will require that notice include blanket-specific information that will be available on the Commission's Web site. Accordingly, § 157.203(d)(2)(iv) of the Commission's regulations is revised to read as follows: ''A general description of the blanket certificate program and procedures, as posted on the Commission's website at the time the landowner notification is prepared, and the link to the information on the Commission's website.''

45. In response to Williston, the Commission clarifies that the information requirements stated in § 157.203(d)(1), including the additional requirements of revised § 157.203(d)(1)(iii), are applicable to landowner notification for proposed blanket certificate projects that qualify for automatic authorization. The information requirements stated in § 157.203(d)(2), including the additional requirements of revised § 157.203(d)(2)(i), (ii), (iv), (v), and (vii), are applicable to public notice for proposed blanket certificate projects that do not qualify for automatic authorization.

Summary of Rights

46. Revised § 157.203(d)(2)(v) requires that in the notice to affected landowners of a proposed project, the project sponsor include a brief summary of the rights the landowner has in Commission proceedings and in proceedings under the eminent domain rules of the relevant state(s). INGAA contends affected landowners will perceive any discussion of eminent domain ''as a threat that their property will be condemned if they do not consent to an easement agreement,'' an interpretation that ''could cause more harm than good,'' [32] and comments that the description of state eminent domain rules may prove misleading if a project sponsor proceeds with condemnation actions under federal eminent domain law. Duke worries discussing landowner rights would ''constitute the provision of legal advice in most jurisdictions,'' and because ''[m]any bar associations prohibit lawyers from giving advice to unrepresented third parties,'' this could create a ''potential legal conflict for natural gas companies.'' [33] Duke recommends the contents of the notice be limited to informing affected landowners of their right to obtain local counsel.

47. As INGAA recognizes, discussions concerning the potential to acquire property rights by means of eminent domain can be disconcerting to affected landowners. It has been the Commission's experience that such discussions are most prone to be perceived as threatening when the initial contact with landowners is made in person by a project sponsor's representative seeking physical access to the property. The Commission believes a far less provocative means to inform affected landowners is to present them with a brief, clear, and candid description of the eminent domain process in written form. Landowners cannot be expected to engage in negotiations and reach decisions regarding their property without such information. The Commission concurs with INGAA's apprehension that landowners may be confused by a description of state condemnation if federal condemnation is employed; accordingly, § 157.203(d)(2)(v) of the Commission's regulations is revised to omit the reference to state proceedings and to instead require a ''brief summary of the rights the landowner has in Commission proceedings and in proceedings under the relevant eminent domain rules.''

48. The Commission agrees with Duke's observation that affected landowners ought to be informed of their right to obtain counsel, and this fact should be included in the required summary of landowner rights. In response to Duke's concern that complying with § 157.203(d)(2)(v) could constitute the practice of law or place project sponsors with an ethical quandary, the Commission clarifies that the required brief summary of rights and procedures is descriptive, not interpretative. Project sponsors are expected to summarize or recite applicable law, and no more. Not only need no advice be proffered, none should be. Finally, the Commission notes similar arguments were presented when the original landowner notification rule was instituted in 1999;[34] subsequently, there has been no evidence of significant difficulties in complying with the requirements of the rule.

c. Landowner Contact

49. As proposed, § 157.203(d)(1)(B) requires that in a notice to affected landowners of a proposed project, the project sponsor include a local contact to call first with problems or concerns. INGAA points out that for certain projects, the personnel best able to respond to problems or concerns may be remotely located, *e.g.*, at a company's central office. Therefore, INGAA asks that the ''local'' specification be removed, and in its place, project sponsors be required to include the toll-free telephone number of a company representative responsible for responding to affected landowners. The Commission accepts INGAA's argument that its alternative procedure will provide the same protections for landowners. Therefore, § 157.203(d)(1)(B) of the Commission's regulations is revised to read as follows: ''Provide a local or toll-free phone number and a name of a specific person to be contacted by landowners and with responsibility for responding to landowner problems and concerns, and who will indicate when a landowner should expect a response.''

2. Notification Times

50. Currently, under § 157.203(d)(1) of the Commission's regulations, before commencing construction of an automatically authorized blanket project, project sponsors are required to give affected landowners 30 days notice in advance of construction. For blanket projects that do not qualify for automatic authorization, under § 157.203(d)(2), project sponsors are required to provide a 45-day prior notice to the public, during which any person, or the Commission, can protest the proposal. The Final Rule extends each of these time frames by 15 days. INGAA, NGSA, and pipelines object to offering additional notice time, arguing that (1) the proposed increase in project

[32] INGAA's Comments at 16 (Aug. 25, 2006).

[33] Duke's Comments at 15 (Aug. 25, 2006).

[34] *Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements*, Order No. 609, 64 FR 57374 (Oct. 25, 1999); FERC Stats. & Regs. ¶31,082 (1999).

costs should not change the nature of the projects undertaken pursuant to blanket authority; (2) there is no evidence the current notice periods are too short; and (3) affected landowners and the public should be able to reach a decision on whether to protest well within the current notice periods.[35]

51. The NOPR stated:

> In view of the proposed expanded scope and scale of blanket certificate authority, which can be expected to increase the number of automatic authorization projects undertaken and the number of people impacted, an additional 15 days offers greater assurance that there will be adequate time for landowners to state their concerns and for project sponsors and the Commission to respond * * * [T]he additional time will provide the Commission with a more reasonable period of time to conduct and conclude its environmental assessment (EA) of a proposal. This NOPR contemplates an increase in the number, extent, kind, and complexity of facilities subject to blanket certificate authority, yet even for the types of projects currently permitted, 45 days has proved to be, on occasion, an unrealistically short time for the consultation and analysis required to complete an EA. The additional time will ensure the Commission is not forced to protest a prior notice project merely as a means to gain time to finish an EA. The Commission does not expect the extended landowner and public notice periods to unduly delay blanket certificate projects, since natural gas companies, in large part, can dictate when a blanket certificate project may begin construction by when the company elects to initiate the notice process.

52. It is not only the increase in project costs, *i.e.*, an expansion in scale of blanket authorized activities, it is also the far wider range in the types of projects permitted under the blanket authority that warrant adding time to allow for adequate consideration of what the Commission anticipates will be blanket proposals that are both more complex and more numerous. The Commission notes that to the extent issues raised by a prior notice proposal cannot be addressed in the time provided, a protest is the probable outcome, which if not resolved, would result in the proposal being treated as a case-specific NGA section 7(c) application necessitating the preparation and issuance of a Commission order on the merits. The Commission affirms the need to add 15 days to the notice periods, for the reasons stated in the NOPR.

3. Annual Report on Automatic Authorization Projects

53. Revised §§ 157.208(e)(4)(ii) and (iii) require that the annual report filed for automatic authorization projects document the progress toward restoration and discuss problems or unusual construction issues and corrective actions. INGAA, Duke, and Williston contend that providing this information will be burdensome, especially for large pipelines that might rely on automatic authorization for numerous projects each year, and may require placing additional personnel on site to monitor progress on each project.

54. The Commission has a different perspective. Certificate holders are currently required to comply with all the conditions in § 157.206(b) of the Commission's blanket certificate regulations. Section 157.206(b), in addition to setting forth specific conditions, makes blanket certificate activities subject to the conditions in § 380.15 of the Commission's regulations implementing NEPA, as well as requiring that all blanket certificate activities be consistent with all applicable law implementing the Clean Water Act, the Clean Air Act, and other statutes relating to environmental concerns. Consequently, in order to satisfy all the conditions applicable to blanket certificate activities, it is already necessary for project sponsors (1) to have plans and procedures in place to ensure compliance with environmental conditions, and (2) to have environmental inspectors in place to record a project's construction's compliance with environmental conditions. Hence, the Commission does not view the new § 157.208(e)(4)(ii) and (iii) requirements as asking companies to gather and report new information, but rather, as having companies submit information that they are already obliged to compile. Similarly, to the extent project sponsors find they have to place personnel at construction sites to monitor a project's progress, this does not constitute a new requirement, but rather, is a means to fulfill an ongoing obligation to verify that projects are built in accord with all applicable environmental conditions. Consequently, the Commission adopts the expanded annual reporting requirements.

4. Environmental Conditions

(a). Noise Levels

(1). Compressor Station Site Property Boundary

55. Revised § 157.206(b)(5)(i) states that noise attributable to a compressor station ''must not exceed a day-night level (L_{dn}) of 55 dBA at the site property boundary.'' In contrast, the current regulations specify that noise attributable to a compressor station is to be measured ''at any pre-existing noise-sensitive area.''

56. Duke contends this new noise criterion could compel companies to expand compressor site boundaries, which would add to the cost of new or additional compression and, potentially, an increase in environmental impacts associated with adding acreage to existing and new sites. INGAA argues that compressors were installed in anticipation of meeting noise level requirements as measured at the nearest noise sensitive area, and that it is inequitable to institute this change and compel ratepayers to bear the cost of compliance. Boardwalk objects to the revision. HFP Acoustical asks if compressor noise is to be measured as an average of noise levels at several spots on the perimeter of the property line or if every point on a site's property boundary must meet the 55 dBA standard. HFP Acoustical seeks clarification on whether there will be any acknowledgment of existing sources of noise unrelated to compressor operations.

57. The Commission clarifies that this new noise measurement criterion only applies to facilities placed in service after the effective date of this rule;[36] thus, existing compressor stations continue to be required to meet the 55 dBA standard as measured at pre-existing noise-sensitive areas, not at the site's property boundary. However, any increase in noise due to additions or modifications to an existing compressor station undertaken subsequent to the effective date of this rule will require that the noise attributable to additions or modifications be measured at the site's boundary. The Commission further clarifies that when measuring noise at new stations, the 55 dBA standard must be met at every point on

[35] As an alternative, Williston proposes that blanket projects that qualify for automatic authorization retain a 30-day landowner notification time period, with only larger, prior notice projects subject to a 45-day notice. Williston claims its suggestion will ensure that those parties affected by major projects, which are more likely to raise landowner concerns, will be afforded additional time, while minor and routine projects will be permitted to move forward faster.

[36] In enacting the blanket certificate program, the Commission expressed its expectation that any ''amendments would most likely not affect facilities constructed or service undertaken before the effective date of an amendment, but would apply prospectively.'' Order No. 234–A, 47 FR 38871 (Sept. 3, 1982); FERC Stats. & Regs. ¶ 30,389; 20 FERC ¶ 61,271 (1982).

a site's property boundary.[37] Finally, with respect to existing noise levels at the property boundary, the certificate holder will only be responsible for taking measures to reduce noise in excess of the 55 dBA standard that is attributable to the operation of the compressor station.

58. Although existing compressor stations are grandfathered, the Commission concurs with comments that anticipate the new standard may compel companies to extend existing compressor station boundaries if additions or modifications are made that increase noise at the site boundary. However, while this may entail additional costs, the Commission does not view it as adding to adverse environmental impacts. Indeed, overall environmental impacts may diminish, since land within a station boundary is frequently set aside for benign environmental use. Further, the Commission does not accept the contention that this revision will induce the development of new compressor stations, since the cost to mitigate noise attributable to adding compression at an existing site is likely to be less than acquiring a new site.

(2). Noise Attributable to Drilling

59. In § 157.206(5)(ii), the Commission establishes the goal that perceived noise from drilling in between 10 p.m. and 6 a.m. be kept at or below 55dBA in any preexisting noise-sensitive area. INGAA contends adherence to this goal would be impractical and costly. In particular, INGAA contends that suspending a horizontal directional drill (HDD) at night to adhere to noise restrictions would be a poor engineering practice, creating a substantial risk of failure. INGAA asks that the Commission (1) clarify the 55 dBA standard only applies if ambient noise at night is below that level; (2) clarify that where the existing noise level is 55 dBA or more, the noise standard be that a new project produces no appreciable increase in the ambient noise; and (3) clarify that mitigation measures may be employed to meet the 55 dBA noise level, such as temporarily relocating occupants of a noise sensitive area.

60. HFP Acoustical asks the Commission to clarify (1) whether the nighttime noise constraint impacts daytime drilling noise standards; (2) whether recirculation or other stabilizing activities could proceed at night; and (3) whether the reference to nighttime as from 10 p.m. to 6 a.m. should be changed to 10 p.m. to 7 a.m. to conform to the period during which a 10 dBA penalty currently applies. HFP Acoustical suggests that if the Commission intends to set a nighttime noise level limit, it state the limit in terms of the L_{eq} night or L_n value, rather than the L_{dn} value, which covers a 24-hour period.

61. In response to a request by Williston, the Commission clarifies that the noise standard for drilling at night is a goal, not a regulatory requirement. The Commission also clarifies that the § 157.206(5)(ii) reference to ''perceived noise from the drilling'' has the same meaning as the § 157.206(5)(i) reference to ''noise attributable to'' compression. Consequently, where the existing ambient noise level at night is below 55 dBA, and drilling activity boosts it above that threshold, the goal is to reduce the level down to 55 dBA; where the ambient noise level at night is above 55 dBA, and drilling activity causes that level to rise, the goal to take action to bring noise back to its pre-drilling level. As an alternative to reducing the noise from drilling, the Commission agrees that appropriate mitigation measures can include temporarily relocating or compensating people residing in areas affected by drilling activities.

62. The Commission acknowledges that reaching the stated goal may involve incurring additional costs, and recognizes that at times the goal may be impractical. Further, reaching the goal should not be achieved at the expense of adding to a project's risk. For example, the Commission does not necessarily expect an ongoing HDD to be suspended at night if the interruption could cause the drill to fail, but does expect project sponsors to explore mitigation measures, such as erecting barriers so that continuous drilling can meet the 55 dBA goal. In response to HFP Acoustical, the Commission clarifies that all activities associated with drilling, such as recirculation or other stabilizing activities, are subject to the noise level goal; the Commission leaves it to the project sponsor's discretion when, during a 24-hour cycle, to undertake a particular activity. The Commission will adopt HFP Acoustical's suggestion and clarify that the nighttime noise goal will apply between the hours of 10 p.m. and 7 a.m., and will be expressed as a nighttime level, L_n, of 55 dBA.

b. Environmental Inspector Report

63. Revised § 157.208(c)(10) requires the project sponsor to commit to have the Environmental Inspector's report filed weekly with the Commission for prior notice projects. INGAA, Duke, and Williston maintain this is unnecessary given blanket projects' relatively short construction time, and is impractical given that inspectors may not be on site on a weekly basis. INGAA proposes compliance be ensured by having a completion report filed within 30 days of a project's in-service date. INGAA believes this is adequate since the Commission ''hotline'' is available during construction to resolve allegations of improprieties. Williston suggests weekly reporting only be required when the Commission determines a particular blanket project merits such scrutiny.

64. The Commission does not believe that it can judge whether a particular project merits weekly reporting before the fact, or that its hotline can serve as a means to monitor ongoing construction progress, or that an after-the-fact summary can identify, prevent, or remedy irregularities in construction. The only practical means to monitor compliance with environmental requirements is to monitor progress during construction, hence the existing requirement that an Environmental Inspector be on site during a project's construction. The Commission views revised § 157.208(c)(10) as a clarification of how certificate holders are to verify their fulfillment of this existing obligation. Neither the additional cost or inconvenience of having an inspector available to review construction at multiple small project sites, nor the length of the construction phase of a project, has any bearing on the need for the regulatory requirement that a project sponsor have an inspector present. The Commission notes that an Environmental Inspector need not be an additional individual brought in to review a construction site; this function can be performed by someone on site, provided that individual has been properly trained and charged with inspecting and reporting on compliance with environmental plans and procedures and can perform all the Environmental Inspector's responsibilities.

D. Different Rates for Different Customers for the Same Service

65. In the NOPR, the Commission expressed the belief that its existing policies permit a project sponsor to offer a rate incentive as an inducement to get customers to commit to a proposed project early (*i.e.*, ''foundation shippers''), while offering a less favorable rate to customers that commit later. Few comments take issue with the Commission's conclusion.

[37] As a practical matter, the Commission expects noise readings to be taken at the boundary closest to the compressors or where noise is estimated to be loudest and at the site's ordinal points.

66. However, Process Gas Consumers stress the need for procedural fairness, *e.g.*, that all prospective customers receive the same notice of a proposal, so as to preclude parties from making private bi-lateral agreements in advance of a public offer of new capacity. Boardwalk asks that pipelines be permitted to set rules for open seasons, provided there is no discrimination in the announcement and application of the rules. The Commission affirms that there must be no discrimination in announcing an open season for new capacity and in accepting bids—all potential customers must have an equal opportunity to obtain firm capacity. Provided this condition holds, a project sponsor has the flexibility to set the parameters of the open season.

67. In the NOPR, the Commission observed that:

> [u]nder the Petitioners' proposal, the rate incentives a project sponsor offers to obtain early commitments to a project will be based solely on the timing of each shipper's contractual commitment to the project. However, the Commission can envision that different project sponsors may prefer to offer rate incentives based on something other than the timing of contractual commitments. Because Commission policies permit rate differentials among customers based on a number of grounds—including differing elasticities of demand, volumes to be transported, and length of service commitments—a project sponsor might wish to offer preferential rates to shippers who contract for larger volumes of service.[38]

APGA challenges the Commission's conclusion that it is appropriate to permit project sponsors to offer preferential rates to customers willing to commit to greater capacity. APGA argues this is unfair because ''a large LDC that gets a preferential rate can, for example, compete for new loads by offering lower delivery rates than the smaller LDC despite that fact that both entities committed for capacity at the same time.''[39]

68. The Commission stresses that the foregoing discussion in the NOPR regarding rates constitutes a statement of the Commission's existing policies and practices and this rulemaking proceeding does not contemplate altering existing policies, practices, or regulations affecting rates. Indeed, with respect to rates, the Commission emphasized it did not intend to disturb the status quo, stating that:

> [g]iven the variety of rate incentives that might be offered consistent with Commission policy, the Commission believes it would be premature to go beyond our general finding above and seek to itemize every rate incentive that might be offered in an open season without risk of undue discrimination. Instead, the Commission prefers to review different rate incentives on a case-by-case basis.[40]

Thus, in the NOPR, the Commission made no determination beyond its general observation that currently there are a variety of rate incentives available to project sponsors to induce potential customers to commit to a new proposal. As one such incentive, quantity can be a legitimate basis for awarding new capacity at a lower rate during an open season. When a project sponsor is weighing market conditions in order to determine whether to invest in the construction of a new pipeline or storage field, a lower rate bid by a potential customer can nevertheless represent a significant incentive for the company to go forward with the project if the customer is willing to commit at an early stage to a large quantity.

69. Given the fact-specific circumstances associated with a particular project proposal, the Commission stated its intent to review rate incentives on a case-by-case basis. If APGA believes a project sponsor has employed an unduly discriminatory rate preference in a particular case, APGA may raise this issue in the case in question, and the Commission will address the merits of the matter in the context of that case.

70. As a general observation, a project sponsor can diminish its risk of being charged with undue discrimination if its announcement of an open season clearly specifies the parameters of the bidding provisions and the available rate options so that all potential customers have an equal opportunity to sign up for new service. For example, in their petition, INGAA and NGSA describe the eligibility standard for Group I foundation shippers variously as (1) the date established in the open season for executing contracts or (2) the date the project sponsor makes a ''go/no go'' decision for the project. The first date would appear to involve less risk of discrimination, since it would be announced and set at the start of the open season, whereas the second date appears to give the project sponsor considerable discretion as to when to terminate eligibility for Group I.

E. Additional Regulatory Revisions

71. To implement the above revisions, the Commission will make the following minor conforming revisions: (1) § 157.203(b) of the Commission's regulations is expanded to reference automatically authorized storage remediation and maintenance projects under § 157.213(a); (2) § 157.203(c) of the Commission's regulations is expanded to reference prior notice blanket projects under §§ 157.210, .212. and 213(b);[41] (3) § 157.205(a) of the Commission's regulations is expanded to reference prior notice blanket projects under §§ 157.210, .212. and 213(b); (4) § 157.207 of the Commission's regulations is expanded to reference automatically authorized storage remediation and maintenance projects under § 157.213(a); and (5) § 157.216 of the Commission's regulations is expanded to provide for abandonment of facilities described by the expanded blanket certificate authority.

IV. Information Collection Statement

72. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.[42] Therefore, the Commission is providing notice of its information collections to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[43] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. The only entities affected by this rule would be the natural gas companies under the Commission's jurisdiction. The information collection requirements in this Final Rule are identified as follows:

73. FERC–537, ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment,'' identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under NGA section 7 is required, and includes all blanket certificate projects.

74. FERC–577, ''Gas Pipeline Certificates: Environmental Impact Statements,'' identifies the Commission's information collections relating to the requirements set forth in NEPA and Parts 2, 157, 284, and 380 of the Commission's regulations. Applicants have to conduct appropriate studies which are necessary to determine the impact of the construction and operation of proposed

[38] 71 FR 36276 at 36289 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,894 (2006); 115 FERC 61,338 at P 101 (2006) (footnote omitted). *See, e.g.*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 at P 69–73 (2006).

[39] APGA's Comments at 12 (Aug. 25, 2006).

[40] 71 FR 36276 at 36289 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,894 (2006); 115 FERC ¶ 61,338 at P 102 (2006).

[41] The revisions to 18 CFR 157.203 clarify, in response to a question raised by Dominion, that all the provisions of this section apply to projects proceeding under 18 CFR 157.210, .212. and .213.

[42] 5 CFR 1320.11 (2006).

[43] 44 U.S.C. 3507(d) (2005).

jurisdictional facilities on human and natural resources, and the measures which may be necessary to protect the values of the affected area. These information collection requirements are mandatory.

75. Because the expansion of the blanket certificate program will permit projects that are now processed under the case-specific NGA section 7(c) procedures to go forward under the streamlined blanket certificate program, although the burden under the expanded blanket certificate program will increase, the overall burden on the industry will decrease. The Commission estimates that the total annual hours for the blanket certificate program burden will increase by 7,727, whereas the total annual hours associated with case-specific application projects will decrease by 11,997. This represents an overall reduction of 4,270 hours. The Commission did not receive specific comments concerning the burden estimates in the NOPR, and uses the same estimates in this Final Rule. Several commenters did indicate that providing information for the Annual Report on Automatic Authorization Projects would be burdensome. However, as explained herein, the Commission believes that much of this information is already required to be compiled and therefore to report it to the Commission will not result in additional burdens to certificate holders.

Data collection	Number of respondents	Number of responses/ filings	Number of hours per response	Total annual hours
FERC–537 (Part 157)	76	206	−42.02	7,727
FERC–577 (Part 380)	76	−62	193.50	−11,997

Information Collection Costs: The above hours reflect the total blanket certificate program reporting burden as expanded. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of $150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is anticipated to be $2,748,900, an amount that is $640,500 less than the current estimated cost.

Title: FERC–537 and FERC–577.

Action: Proposed Data Collection.

OMB Control Nos.: 1902–0060 and 1902–0128.

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

Necessity of Information: Submission of the information is necessary for the Commission to carry out its NGA statutory responsibilities and meet the Commission's objectives of expediting appropriate infrastructure development to ensure sufficient energy supplies while addressing landowner and environmental concerns fairly. The information is expected to permit the Commission to meet the request of the natural gas industry, as expressed in the INGAA and NGSA petition, to improve the industry's ability to ensure adequate infrastructure is added in time to meet increased market demands. By expanding the scope and scale of the blanket certificate program, the industry is provided a streamlined means to build new and maintain existing infrastructure.

76. Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415, or by e-mail to *michael.miller@ferc.gov*). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, by fax to 202–395–7285, or by e-mail to *oira_submission@omb.eop.gov.*) (Re: OMB control nos. 1902–0060 and 1902–0128.)

V. Environmental Analysis

77. The Commission is required to prepare an environmental assessment (EA) or an environmental impact statement (EIS) for any action that may have a significant adverse effect on the human environment.[44] In 1982, in promulgating the blanket certificate program, the Commission prepared an EA in which it determined that, subject to compliance with the standard environmental conditions, projects under the blanket program would not have a significant environmental impact. As a result, the Commission determined that automatic authorization projects would be categorically excluded from the need for an EA or EIS under § 380.4 of the Commission's regulations. However, the Commission specified that prior notice projects should be subject an EA to ensure each individual project would be environmentally benign. For the reasons set forth below, the Commission continues to believe this would be the case under the blanket certificate program as modified by this rule.

78. First, the monetary limits on projects are simply being adjusted to account for inflationary effects which were not completely captured under the mechanism specified in the regulations (the gross domestic product implicit price deflator as determined by the Department of Commerce). As a result, the scale of projects which will be within the new cost limits will be comparable to those projects that were allowed when the blanket program was first created. Second, but for certain storage remediation and maintenance projects, all the additional types of projects permitted under the expanded blanket program will be subject to the prior notice provisions and will be subject to an EA. Finally, this Final Rule strengthens the standard environmental conditions applicable to all blanket projects. Therefore, the rule does not constitute a major federal action that may have a significant adverse effect on the human environment.

VI. Regulatory Flexibility Act Analysis

79. The Regulatory Flexibility Act of 1980 (RFA)[45] generally requires a description and analysis of regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if regulations would not have such an effect.[46] Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as ''a small entity'' if it has annual revenues of $6.5 million or less. Most companies regulated by the Commission do not fall

[44] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[45] 5 U.S.C. 601–612 (2005).

[46] 5 U.S.C. 605(b) (2005).

within the RFA's definition of a small entity.[47]

80. The procedural modifications should have no significant economic impact on those entities—be they large or small—subject to the Commission's regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that the revised regulations will not have a significant economic impact on a substantial number of small entities.

VII. Document Availability

81. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available in eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type RM06–7 in the docket number field.

82. User assistance is available for eLibrary and the Commission's Web site during normal business hours at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VIII. Effective Date and Congressional Notification

This Final Rule will take effect January 2, 2007. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[48] The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.[49]

[47] 5 U.S.C. 601(3) (2005) citing to section 3 of the Small Business Act, 15 U.S.C. 623 (2005). Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[48] *See* 5 U.S.C. 804(2) (2005).

[49] *See* 5 U.S.C. 801(a)(1)(A) (2005).

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w.

■ 2. In § 157.6, paragraph (d)(2)(i) is revised to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) * * *

(2) * * *

(i) Is directly affected (*i.e.*, crossed or used) by the proposed activity, including all facility sites (including compressor stations, well sites, and all above-ground facilities), rights of way, access roads, pipe and contractor yards, and temporary workspace;

* * * * *

■ 3. In § 157.203,

■ a. In paragraph (b), the phrase ''§ 157.213(a),'' is added immediately after the phrase ''§ 157.211(a)(1),'';

■ b. In paragraph (c), the phrase ''§ 157.210,'' is added immediately after the phrase ''§ 157.208(b),'' and the phrase ''§ 157.212, § 157.213(b),'' is added immediately after the phrase ''§ 157.211(a)(2),'';

■ c. In paragraph (d)(1) introductory text, the phrase ''30 days'' is removed and the phrase ''45 days'' is added in its place, and the phrase ''30-day'' is removed and the phrase ''45-day'' is added in its place;

■ d. In paragraph (d)(1)(ii), the phrase ''; and'' is removed and a semi-colon is added in its place;

■ e. Paragraph (d)(1)(iii) is redesignated as paragraph (d)(1)(iv) and a new paragraph (d)(1)(iii) is added;

■ f. Paragraphs (d)(2)(i) and (d)(2)(ii) are revised;

■ g. In paragraph (d)(2)(iii), the word ''and'' is removed;

■ h. Paragraph (d)(2)(iv) is redesignated as paragraph (d)(2)(vi), and the phrase ''45 days'' is removed and the phrase ''60 days'' is added its place, and the final period is removed and the phrase ''; and'' is added in its place;

■ i. Paragraphs (d)(2)(iv) and (d)(2)(v) are added; and

■ j. A new paragraph (d)(2)(vii) is added to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) * * *

(1) * * *

(iii) A description of the company's environmental complaint resolution procedure that must:

(A) Provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems and concerns during construction of the project and restoration of the right-of way;

(B) Provide a local or toll-free phone number and a name of a specific person to be contacted by landowners and with responsibility for responding to landowner problems and concerns, and who will indicate when a landowner should expect a response;

(C) Instruct landowners that if they are not satisfied with the response, they should call the company's Hotline; and

(D) Instruct landowners that, if they are still not satisfied with the response, they should contact the Commission's Enforcement Hotline.

* * * * *

(2) * * *

(i) A brief description of the company and the proposed project, including the facilities to be constructed or replaced and the location (including a general location map), the purpose, and the timing of the project and the effect the construction activity will have on the landowner's property;

(ii) A general description of what the company will need from the landowner if the project is approved, and how the landowner may contact the company, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

* * * * *

(iv) A general description of the blanket certificate program and procedures, as posted on the Commission's Web site at the time the landowner notification is prepared, and the link to the information on the Commission's Web site;

(v) A brief summary of the rights the landowner has in Commission proceedings and in proceedings under the relevant eminent domain rules; and

* * * * *

(vii) The description of the company's environmental complaint resolution

procedure as described in paragraph (d)(1)(iii) of this section.

* * * * *

■ 4. In § 157.205:

■ a. In paragraph (a) introductory text, the phrase ''§ 157.210,'' is added immediately after the phrase ''§ 157.208(b),'' and the phrase ''§ 157.212, § 157.213(b),'' is added immediately after the phrase ''§ 157.211(a)(2),''and

■ b. In paragraph (d)(1), the phrase ''45 days'' is removed and the phrase ''60 days'' is added in its place.

■ 5. In § 157.206, paragraph (b)(5) is revised to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) * * *

(5)(i) The noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night level (L_{dn}) of 55 dBA at the site property boundary.

(ii) Any horizontal directional drilling or drilling of wells which will occur between 10 p.m. and 7 a.m. local time must be conducted with the goal of keeping the perceived noise from the drilling at any pre-existing noise-sensitive area (such as schools, hospitals, or residences) at or below a night level (L_n) of 55 dBA.

* * * * *

■ 6. In § 157.207, paragraphs (c), (d), (e), (f), (g), and (h) are redesignated, respectively, as paragraphs (d), (e), (f), (g), (h), and (i), and a new paragraph (c) is added to read as follows:

§ 157.207 General reporting requirements.

* * * * *

(c) For each underground natural gas storage facility remediation and maintenance activity authorized under § 157.213(a), the information required by § 157.213(d);

* * * * *

■ 7. In § 157.208,

■ a. Paragraph (c)(9) is revised;

■ b. Paragraph (c)(10) is added;

■ c. In paragraph (d), Table I, ''Year 2006,'' in column 1, titled ''Automatic project cost limit,'' the phrase ''8,200,000'' is removed and the phrase ''9,600,000'' is added in its place, and in column 2, titled ''Prior notice project cost limit,'' the phrase ''22,700,000'' is removed and the phrase ''27,400,000'' is added in its place; and

■ d. Paragraph (e)(4) is redesignated as (e)(4)(i) and paragraphs (e)(4)(ii) through (e)(4)(iv) are added to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(c) * * *

(9) A concise analysis discussing the relevant issues outlined in § 380.12 of this chapter. The analysis must identify the existing environmental conditions and the expected significant impacts that the proposed action, including proposed mitigation measures, will cause to the quality of the human environment, including impact expected to occur to sensitive environmental areas. When compressor facilities are proposed, the analysis must also describe how the proposed action will be made to comply with applicable State Implementation Plans developed under the Clean Air Act. The analysis must also include a description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, National Historic Preservation Act and the Coastal Zone Management Act. Include a copy of the agreements received for compliance with the Endangered Species Act, National Historic Preservation Act, and Coastal Zone Management Act, or if no written concurrence is issued, a description of how the agency relayed its opinion to the company. Describe how drilling for wells or horizontal direction drilling would be designed to meet the goal of limiting the perceived noise at NSAs to an L_{dn} of 55 dBA or what mitigation would be offered to landowners.

(10) A commitment to having the Environmental Inspector's report filed every week.

* * * * *

(e) * * *

(4) * * *

(ii) Documentation, including images, that restoration of work areas is progressing appropriately;

(iii) A discussion of problems or unusual construction issues, including those identified by affected landowners, and corrective actions taken or planned; and

(iv) For new or modified compression, a noise survey verifying compliance with § 157.206(b)(5).

* * * * *

■ 8. Section 157.210 is added to read as follows:

§ 157.210 Mainline natural gas facilities.

Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, construct, modify, replace, and operate natural gas mainline facilities, including compression and looping, that are not eligible facilities under § 157.202(b)(2)(i). The cost of a project may not exceed the cost limitation provided in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

■ 9. Sections 157.212 and 157.213 are added to read as follows:

§ 157.212 Synthetic and liquefied natural gas facilities.

Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, construct, modify, replace, and operate natural gas facilities that are used to transport either a mix of synthetic and natural gas or exclusively revaporized liquefied natural gas and that are not ''related jurisdictional natural gas facilities'' as defined in § 153.2(e) of this chapter. The cost of a project may not exceed the cost limitation provided in column 2 of Table I in § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

§ 157.213 Underground storage field facilities.

(a) *Automatic authorization.* If the project cost does not exceed the cost limitations provided in column 1 of Table I in § 157.208(d), the certificate holder may acquire, construct, modify, replace, and operate facilities for the remediation and maintenance of an existing underground storage facility, provided the storage facility's certificated physical parameters—including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity remain unchanged—and provided compliance with environmental and safety provisions is not affected. The certificate holder must not alter the function of any well that is drilled into or is active in the management of the storage facility. The certificate holder must not segment projects in order to meet this cost limitation.

(b) *Prior Notice.* Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, construct, modify, replace, and operate natural gas underground storage facilities, provided the storage facility's certificated physical parameters—including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity, including injection and withdrawal capacity, remain unchanged—and provided compliance with environmental and safety provisions is not affected unchanged.

The cost of a project may not exceed the cost limitation provided in column 2 of Table I in § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

(c) *Contents of request.* In addition to the requirements of §§ 157.206(b) and 157.208(c), requests for activities authorized under paragraph (b) of this section must contain, to the extent necessary to demonstrate that the proposed project will not alter a storage reservoir's total inventory, reservoir pressure, reservoir or buffer boundaries, or certificated capacity, including injection and withdrawal capacity:

(1) A description of the current geological interpretation of the storage reservoir, including both the storage formation and the caprock, including summary analysis of any recent cross-sections, well logs, quantitative porosity and permeability data, and any other relevant data for both the storage reservoir and caprock;

(2) The latest isopach and structural maps of the storage field, showing the storage reservoir boundary, as defined by fluid contacts or natural geological barriers; the protective buffer boundary; the surface and bottomhole locations of the existing and proposed injection/withdrawal wells and observation wells; and the lengths of open-hole sections of existing and proposed injection/withdrawal wells;

(3) Isobaric maps (data from the end of each injection and withdrawal cycle) for the last three injection/withdrawal seasons, which include all wells, both inside and outside the storage reservoir and within the buffer area;

(4) A detailed description of present storage operations and how they may change as a result of the new facilities or modifications. Include a detailed discussion of all existing operational problems for the storage field, including but not limited to gas migration and gas loss;

(5) Current and proposed working gas volume, cushion gas volume, native gas volume, deliverability (at maximum and minimum pressure), maximum and minimum storage pressures, at the present certificated maximum capacity or pressure, with volumes and rates in MMcf and pressures in psia;

(6) The latest field injection/withdrawal capability studies including curves at present and proposed working gas capacity, including average field back pressure curves and all other related data;

(7) The latest inventory verification study for the storage field, including methodology, data, and work papers;

(8) The shut-in reservoir pressures (average) and cumulative gas-in-place (including native gas) at the beginning of each injection and withdrawal season for the last 10 years; and

(9) A detailed analysis, including data and work papers, to support the need for additional facilities (wells, gathering lines, headers, compression, dehydration, or other appurtenant facilities) for the modification of working gas/cushion gas ratio and/or to improve the capability of the storage field.

■ 10. In § 157.216:

■ a. Paragraph (a)(2) is amended by adding the phrase ''or § 157.213(a)'' immediately after the phrase ''§ 157.211'';

■ b. Paragraph (b)(2) is amended by adding the phrase ''or a facility constructed under § 157.210, § 157.212, or § 157.213(b),'' immediately after the phrase ''paragraph (a)(2) of this section,''; and

■ c. Paragraph (c)(5) is amended by adding, at the end, the phrase ''and a concise analysis discussing the relevant issues outlined in § 380.12 of this chapter.''

[FR Doc. E6–18027 Filed 10–30–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–0557e; FRL–8225–7]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on February 1, 2006 and concern volatile organic compound (VOC) emissions from organic liquid storage and transfer facilities. We are approving YSAQMD Rule 2.21 that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on November 30, 2006.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2005–0557e for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

I. Proposed Action

On February 1, 2006 (71 FR 5172), EPA took direct final action with a concurrent proposal to approve the following rule into the California SIP.

Local agency	Rule	Rule title	Adopted	Submitted
YSAQMD	2.21	Organic Liquid Storage & Transfer	09/14/05	10/20/05

We took direct final action to approve this rule because we determined that it complied with the relevant CAA requirements and we did not expect adverse public comment. Our direct final action contains more information on this rule and our evaluation.

However, we did receive adverse public comments on our direct final approval action. Consequently, we withdrew our direct final action on April 11, 2006 (see 71 FR 18219). Our February 1, 2006 concurrent proposed action (see 71 FR 5211) provides the basis for today's final action.

II. Public Comments and EPA Responses.

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from David Moralez, a private citizen, in a letter dated March 3, 2006, sent and received via electronic mail March 3, 2006.

Mr. Moralez said that by approving into the SIP the September 14, 2005 amendments to Rule 2.21, EPA will remove two provisions, Section 502.4 concerning annual bulk plant compliance monitoring and Section 607 specifying a test method for determining bulk plant compliance with Section 309.1's vapor recovery standard; thereby relaxing significantly existing SIP requirements.

Regarding the SIP relaxation issue, we acknowledge that an annual compliance testing requirement, in Section 502.4, and its related test method, in Section 607, is being removed from the SIP. However, we disagree that removing these provisions represent a significant or problematic relaxation of the SIP.

Bulk plants are required to maintain continuous compliance with the Section 309 requirements and these requirements are unchanged. Under the provisions of Section 309, either CARB or YSAQMD may require a bulk plant recertify or retest a vapor recovery system at any time using CP–202 ''Certification Procedure for Vapor Recovery Systems of Bulk Plants'', TP–202.1 ''Determination of Emission Factor of Vapor Recovery Systems of Bulk Plants,'' or Executive Order G–846 ''Screening Test Procedures for Certification of Gasoline Bulk Vapor Recovery Systems''.

Furthermore, at any time, YSAQMD may inspect a bulk plant using the test methods described in Sections 605 and 608. Section 605 includes test methods for determining leaks and whether or not a bulk plant meets the ''gas tight'' requirements of Section 309.2. Section 608 describes several test methods for determining vapor recovery system efficiency, including a reference to the applicable CARB Executive Orders needed to determine compliance and an annual compliance check using a static pressure decay test.

Should a bulk plant fail any of these tests, YSAQMD can order the source to do further compliance testing using either the methods in the rule, or TP–202.1. In turn, YSAQMD can request that CARB recertify the source, using either CARB E.O. G–846, or CP–201 once any corrective repairs have been made.

In sum, we have reviewed Rule 2.21's bulk plant requirements, the test methods remaining within the rule, related CARB Executive orders, as well as CARB and YSAMQD legal authority and find that the rule is enforceable with adequate provisions to determine compliance despite the removal of Sections 502.4 and 607. Consequently, we find that the YSAQMD amendments to Rule 2.21 are consistent with the Clean Air Act, section 110(l) and do not significantly relax the SIP.

Mr. Moralez also commented that EPA did not follow its guidance in proposing to approve Rule 2.21. First, the 2004 SIP approved rule included an annual source testing requirement consistent with federal guidance, Control Technique Guideline (CTG) document EPA–450/77–035. Second, deleting CARB test method TP–202.1 (formerly within Section 607) from the SIP approved rule does not meet EPA guidance requiring that SIP rules specify all sampling and analysis methods needed to determine compliance with the rule.

We examined the CTG entitled ''Guideline Series: Control of Volatile Organic Compound Emissions from Bulk Plants,'' EPA–450/2–77–035, December 1977 and found that this CTG does not contain an annual source (compliance) test requirement consistent with the mass balance methodology cited in Section 502.4 using California Air Resources Board (CARB) test method TM–202.1. Furthermore, we found no reference within the CTG to any annual source test requirement of any kind. Consequently, removing Section 502.4 from the rule and the SIP does not make the rule inconsistent with the CTG and the requirements of Section 182(c)(3) of the CAA.

Regarding Mr. Moralez's assertion that the rule does not include all sampling and analysis methods needed to determine compliance, as we discussed earlier, we believe that existing test methods and compliance checks within the rule are adequate to determine compliance and enforce Section 309's bulk plant requirements.

Finally, Mr. Moralez asserted several times that YSAQMD's action to amend Rule 2.21 and remove Section 502.4 and Section 607 is unsupported and, consequently, EPA cannot approve it.

However, we found that YSAQMD's amendments are supported adequately, allowing EPA consideration of this SIP submittal. The YSAQMD's August 10, 2005 staff report and September 13, 2005 addendum to its staff report explain its revisions to the rule. The September 13, 2005 addendum to the staff report addressed the amendments to the rule concerning bulk plants and Mr. Moralez's comments to the YSAQMD, in particular. These rule amendments and supporting material received adequate public notice and were duly adopted by the YSAQMD governing board.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP. On January 22, 2004 (69 FR 3012), we published a limited approval and limited disapproval of YSAQMD Rule 2.21 as adopted locally on June 12, 2002 and submitted by the State on August 6, 2002. This disapproval action started a sanctions clock for imposition of offset sanctions on August 22, 2005 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31. In our February 1, 2006 proposal, we found that YSAQMD's September 14, 2005 revisions to Rule 2.21 corrected the deficiencies identified in our limited disapproval action. Because no comments were submitted that change our February 1, 2006 assessment of Rule 2.21, all sanctions and Federal Implementation Plan obligations associated with our January 22, 2004 limited disapproval of the rule will be terminated on the effective date of this final rule approval action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

The Congressional Review Act, 5 U.S.C. 801 *et seq,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule 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 *January 2, 2007*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 24, 2006.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(342)(i)(A) and (c)(342)(i)(A)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(342) * * *

(i) * * *

(A) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.21, adopted on March 23, 1994, and amended on September 14, 2005.

* * * * *

[FR Doc. E6–18167 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0747; FRL–8231–5]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the usage of solvents. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on January 2, 2007 without further notice, unless EPA receives adverse comments by November 30, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0747, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

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

Table of Contents

I. The State's Submittal
A. What Rule Did the State Submit?
B. Are There Other Versions of This Rule?
C. What Is the Purpose of the Submitted Rule Revisions?
II. EPA's Evaluation and Action
A. How Is EPA Evaluating the Rule?
B. Do the Rule Revisions Meet the Evaluation Criteria?
C. EPA Recommendation To Further Improve a Rule
D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. the State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that the amended rule was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE FOR DIRECT FINAL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
AVAQMD	442	Usage of Solvents	11/15/05	03/10/06

On March 30, 2006, the submittal of March 10, 2006 was determined to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of AVAQMD Rule 442 into the SIP on November 16, 1983 (48 FR 52054).

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. This rule was developed as part of the local air district's programs to control these pollutants.

The purposes of the AVAQMD Rule 442 revisions relative to the SIP rule are as follows:

- The rule is revised to conform to present AVAQMD rule format and to be consistent with other District rules.
- A section on purpose is added for clarity.
- A section on applicability is added to clarify that the rule is not applicable to other rules with VOC emission limits in Regulation IV (such as Rules 461, 462, 463, and 464) and Regulation XI (such as Rules 1102 and 1151).
- A section with definitions is added for clarity.
- A section with monitoring, recordkeeping, and reporting requirements is added to determine compliance.
- A section describing specific test methods is added to determine compliance.
- The current VOC emissions limit that allows disposal of up to 1.3 gallons per day of VOC by any means is made more stringent by prohibiting disposal of VOC in a manner that would allow evaporation of VOC into the atmosphere.
- The current emissions limit for VOC of 18 kg (39.6 pounds) per day is retained and converted to the equivalent monthly emission limit of 540 kg (1,190 pounds) per month.
- The current VOC emissions limit for organic materials that come in contact with a flame, are baked, are heat cured, or are heat polymerized of 195 kg (429 pounds) per month is removed; however, the VOC emissions limit for these processes are covered by other rules in Regulations IV and XI.
- The current VOC emissions limit deletes the 8,036 kg (18,000 pounds) per day limit for ''non-photochemically reactive'' solvents. A part of these solvents are covered by the ''VOC'' limit and a part do not have a limit because they are not precursors to ozone.
- A limit on VOC emissions from coating aerospace assemblies and a limit for tire manufacturers expired by their own terms.
- A limit on VOC emissions from primer or topcoat application to motor vehicles is covered by Rule 1151.
- An exemption for aerosol cans is added, because they are regulated by Rule 1102.
- Exemptions for high solid or ultra-high solid materials are removed due to a change in VOC terminology.

EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The AVAQMD regulates a 1-hour ozone nonattainment area (see 40 CFR part 81). However, RACT is not required for Rule 442, because no major sources of VOC are expected to be covered by Rule 442. Major sources are covered by other rules in Regulations IV and XI.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA, May 25, 1988 (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendation To Further Improve a Rule

The TSD describes an additional revision to AVAQMD Rule 442 that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted AVAQMD Rule 442 because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 30, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 2, 2007. This will incorporate the rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule 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 January 2, 2007.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 1, 2006.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(344) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(344) New and amended regulations for the following APCDs were submitted on March 10, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) Antelope Valley Air Quality Management District.

(*1*) Rule 442, adopted on May 7, 1976 and amended on November 15, 2005.

* * * * *

[FR Doc. E6–18173 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0539, EPA–R05–OAR–2006–0610; FRL–8224–3]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving requests submitted by the Indiana Department of Environmental Management (IDEM) on December 21, 2005 and June 27, 2006 to revise the Indiana State Implementation Plan (SIP) in two areas: to amend 326 IAC 1–3–4, ambient air quality standards, to provide consistency between State and Federal reference conditions for measurements of particulate matter air quality; and to update the references to the Code of Federal Regulations (CFR) from the 2002 edition to the 2004 edition.

DATES: This rule is effective on January 2, 2007, unless EPA receives adverse written comments by November 30, 2006. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0539, EPA–R05–OAR–2006–0610 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov.*
- Fax: (312)886–5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0539, EPA–R05–OAR–2006–0610. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The www.regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Jonathan Nichols, Life Scientist, at (312) 353–7942 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jonathan Nichols, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7942, *nichols.jonathan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
A. Submitting CBI
B. Tips for Preparing Your Comments
II. Background
A. When Did the State Submit the Requested Rule Revisions to EPA?
B. Did Indiana Hold Public Hearings for Each of These Rule Revisions?
III. What Are the Revisions That the State Requests Be Incorporated Into the SIP?
A. CFR Reference
B. Reference Conditions for PM Measurements
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. When Did the State Submit the Requested Rule Revisions to EPA?

IDEM submitted the requested rule revisions related to an update to the CFR reference on December 21, 2005, followed by the update providing consistency between State and Federal particulate matter reference conditions on June 27, 2006.

B. Did Indiana Hold Public Hearings for Each of These Rule Revisions?

IDEM held public hearings for both of the rule revisions that were submitted: particulate matter reference condition standards rule revision public hearings were held on October 5, 2005, and December 7, 2005; and CFR reference update public hearings were held on February 2, 2005 and June 1, 2005. IDEM did not receive any comments concerning either rule revision.

III. What Are the Revisions That the State Requests Be Incorporated Into the SIP?

The State has requested the following revisions: Changes to 1–1–3, References to the Code of Federal Regulations; and changes to 326 IAC 1–3–4, to provide consistency between State and Federal particulate matter measurement reference standards. The revisions are described in more detail below.

A. CFR Reference

The reference to the CFR was updated in 326 IAC 1–1–3 from the 2002 edition to the 2004 edition. This is solely an administrative change that allows Indiana to reference a more current CFR.

B. Reference Conditions for PM Measurement

IDEM is requesting the amendment of 326 IAC 1–3–4, ambient air quality standards, to provide consistency between State (326 IAC 1–3–4) and Federal (40 CFR 50.3) reference conditions for measurements of particulate matter air quality.

In 1997, EPA promulgated revised particulate matter national ambient air quality standard revisions at 40 CFR part 50 for both PM_{10} (coarse particulate matter) and PM2.5 (fine particulate matter). Measurement of both standards was to be reported based on ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period. The Indiana Air Pollution Control Board adopted these standards on September 1, 2004.

As a result of litigation over the 1997 standards in which the PM_{10} standard was vacated, EPA revised 40 CFR 50.3 on July 30, 2004 (69 FR 45592, 45595).[1] It now reflects the former standard reference conditions, i.e., 25 degrees Celsius (temperature) and 760 millimeters of mercury (1,013.2 millibars) (pressure) for PM_{10}. The submitted revisions to 326 IAC 1–3–4 should ensure that specified reference measurement conditions in the Indiana SIP are consistent with 40 CFR 50.3, as revised.

IV. What Action Is EPA Taking Today?

We are approving revisions to the Indiana SIP in two areas:

(1) To amend 326 IAC 1–3–4, ambient air quality standards, to provide consistency between State (326 IAC 1–3–4) and Federal (40 CFR 50.3) reference conditions for measurements of particulate matter air quality; and (2) to update the references to the Code of Federal Regulations (CFR) from the 2002 edition to the 2004 edition.

We are publishing this action without prior proposal because we view this as a noncontroversial 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 State plan if relevant adverse written comments are filed. This rule will be effective January 2, 2007 without further notice unless we receive relevant adverse written comments by November 30, 2006. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective January 2, 2007.

[1] See *American Trucking Associations, Inc.* v. *EPA,* 175 F.3d (D.C. Cir. 1999); affirmed inpart, reversed in part, 531 U.S. 457 (2001).

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule 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. section 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 January 2, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 14, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(177) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(177) The Indiana Department of Environmental Management submitted revisions to Indiana's State Implementation plan on December 21, 2005, and June 27, 2006. Revisions to 326 IAC 1–3–4 provide consistency between State (326 IAC 1–3–4) and Federal (40 CFR 50.3) reference conditions for measurements of particulate matter air quality; and amendments to 326 IAC 1–1–3 update the references to the Code of Federal Regulations (CFR) from the 2002 edition to the 2004 edition.

(i) Incorporation by reference. The following sections of the Indiana Administrative Code are incorporated by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 1: General Provisions, Rule 1: Provisions Applicable Throughout Title 326, Section 3: References to the Code of Federal Regulations. Filed with the Secretary of State on October 14, 2005 and effective on November 13, 2005. Published at Indiana Register, Volume 29, Number 3, December 1, 2005 (29 IR 795).

(B) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 1: General Provisions, Rule 3: Ambient Air Quality Standards, Section 4: Ambient Air Quality Standards. Filed with the Secretary of State on March 6, 2006 and effective on April 5, 2006. Published at Indiana Register, Volume 29, Number 7, April 1, 2006 (29 IR 2179).

[FR Doc. E6–18169 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 106

Rulemaking Procedures

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of October 1, 2005, on page 17, part 106 is corrected by reinstating § 106.100 to read as follows:

§ 106.100 Required information for a petition for rulemaking.

(a) You must include the following information in your petition for rulemaking:

(1) A summary of your proposed action and an explanation of its purpose.

(2) The language you propose for a new or amended rule, or the language you would delete from a current rule.

(3) An explanation of your interest in your proposed action and the interest of anyone you may represent.

(4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(5) Any specific cases that support or demonstrate the need for your proposed action.

(b) If the impact of your proposed action is substantial, and data or other information about that impact are available to you, we may ask that you provide information about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law, of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)

(3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(4) The recordkeeping and reporting burdens of your proposed action and whom they would affect.

(5) The effect of your proposed action on the quality of the natural and social environments.

[FR Doc. 06–55528 Filed 10–30–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 102406A]

Fraser River Sockeye Salmon Fisheries; Inseason Orders

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

ACTION: Temporary inseason orders; request for comments.

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2006 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing dates, times, and areas for the gear types of U.S. treaty Indian and all citizen fisheries during the period the Panel exercised jurisdiction over these fisheries.

DATES: The effective dates for the inseason orders are set out in this document under the heading Inseason Orders.

Comments will be accepted through November 15, 2006.

ADDRESSES: Comments may be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Comments can also be submitted via e-mail at *Fraser2006salmon@noaa.gov*, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments and include ''I.D. 102406A'' in the subject line of the message. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: David Cantillon, (206) 526–4140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F provide a framework for the implementation of certain regulations of the Commission and inseason orders of the Commission's Fraser River Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye and pink salmon fishing unless opened by Panel orders that are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations and are issued by Regional Administrator, Northwest Region, NMFS. Official notification of these inseason actions is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). The inseason orders are published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2006 orders are being published in this single document to avoid fragmentation.

Inseason Orders

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2006 fishing season. Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1); those dates and times are listed herein. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22:

Order No. 2006–01: Issued 12 p.m., July 27, 2006.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gill nets from 12 p.m. (noon), Friday, July 28, 2006, to 12 p.m., Wednesday, August 2, 2006.

Order No. 2006–02: Issued 11:45 a.m., August 2, 2006.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open period for drift gill nets from 12 p.m., Wednesday, August 2, 2006, to 12 p.m., Saturday, August 5, 2006.

Order No. 2006–03: Issued 11:45 a.m., August 4, 2006.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m., Saturday, August 5, 2006 through 12 p.m., Wednesday, August 9, 2006.

Areas 6, 7, and 7A: Open to net fishing from 4 a.m. Sunday, August 6, 2006 to 9 p.m. Sunday, August 6, 2006.

All Citizen Fisheries

Areas 7 and 7A Purse Seine: Open to fishing from 8 a.m. until 6 p.m. on Monday, August 7, 2006.

Areas 7 and 7A Gillnet: Open to fishing from 2 p.m. until 11:59 p.m. (Midnight) on Monday, August 7, 2006.

Areas 7 and 7A Reef Net: Open to fishing from 10 a.m. until 8 p.m. on Monday, August 7, 2006.

Order No. 2006–04: Issued 11:45 a.m., August 8, 2006.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m., Wednesday, August 9, 2006 to 12 p.m., Saturday, August 12, 2006.

Areas 6, 7, and 7A: Open to net fishing from 4 a.m., Thursday, August 10, 2006 to 10 p.m., Friday, August 11, 2006.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m., Wednesday, August 9, 2006.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m., August 9, 2006.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m., Wednesday, August 9, 2006.

Order No. 2006–05: Issued 11:45 a.m., August 11, 2006.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m., Saturday, August 12, 2006, to 12 p.m., Wednesday, August 16, 2006.

Areas 6, 7, and 7A: Open to net fishing from 10 p.m., Friday, August 11, 2006, to 11:59 p.m., Sunday, August 13, 2006.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m. on Monday, August 14 and on Tuesday, August 15, 2006.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m. on Monday, August 14 and on Tuesday, August 15, 2006.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m. on Tuesday, August 15, and on Wednesday, August 16, 2006.

Order No. 2006–06: Issued 4 p.m., August 15, 2006.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m., Wednesday, August 16, 2006, to 12 p.m., Saturday, August 19, 2006.

Areas 6, 7, and 7A: Open to net fishing from 4 a.m., Wednesday, August 16, 2006 to 10 p.m., Thursday, August 17, 2006.

Order No. 2006–07: Issued 12:30 p.m., August 17, 2006.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m., Friday, August 18, 2006.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m., Friday, August 18, 2006.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m., Saturday, August 19, 2006.

Order No. 2006–08: Issued 12:30 p.m., August 18, 2006.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m., Saturday, August 19, 2006 to 12 p.m., Wednesday, August 23, 2006.

Areas 6, 7, and 7A: Open to net fishing from 4 a.m., Monday, August 21, 2006 to 10 p.m., Tuesday, August 22, 2006.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m., Wednesday, August 23, 2006.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m., Wednesday, August 23, 2006.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m., Sunday, August 20, 2006.

Order No. 2006–09: Issued 4:30 p.m., August 22, 2006.

All Citizen Fisheries

Areas 7 and 7A: Scheduled fishery opening for Wednesday, August 23, 2006 was rescinded.

Order No. 2006–10: Issued 12:30 p.m., August 25, 2006.

Treaty Indian Fishery

Areas 4B, 5, 6C: Open for fishing from 5 p.m. Friday, August 25, 2006 to 12:00, Wednesday, August 30, 2006.

Areas 6, 7, 7A: Open for fishing 4 a.m. Monday, August 28, 2006 to 10 p.m. Tuesday, August 29, 2006.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 9 a.m. Wednesday, August 30, 2006 to 1 a.m. Thursday, August 31, 2006.

Areas 7 and 7A Purse Seine: Open to fishing from 6 a.m. until 9 a.m., Wednesday, August 30, 2006.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m., Wednesday, August 30, 2006.

Order No. 2006–11: Issued 2:45 p.m. August 29, 2006.

Treaty Indian Fisheries

Areas 4B, 5, 6C: Open to fishing from 12 p.m., Wednesday, August 30, 2006 to 12 p.m., Saturday, September 2, 2006.

Order No. 2006–12: Issued 12:30 p.m. September 1, 2006.

Treaty Indian Fisheries

Areas 4B, 5, 6C: Open for fishing from 12 p.m., Saturday, September 2, 2006 to 12 p.m., Saturday, September 9, 2006.

Areas 6, 7, 7A: Open for net fishing 4 a.m. Tuesday, September 5, 2006 to 8 a.m. Wednesday, September 6, 2006.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 3 p.m. to 11 p.m. Wednesday, September 6, 2006.

Areas 7 and 7A Purse Seine: Open to fishing from 8 a.m. to 11 a.m., Wednesday, September 6, 2006.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. to 9 p.m., Wednesday. September 6, 2006.

Classification

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is impracticable because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: October 25, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–18292 Filed 10–30–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075–1217–02; I.D. 101306A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery

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

ACTION: Temporary rule, tilefish commercial quota adjustment.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that the quota for the tilefish Part-time permit category has been exceeded for fishing year (FY) 2006, requiring an adjustment of the Part-time permit category quota for FY 2007. This

action complies with the Fishery Management Plan for the Tilefish Fishery (FMP) and is intended to continue the rebuilding program in the FMP by taking into account previous overages of the tilefish quota.

DATES: Effective November 1, 2006, through October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, (978) 281–9220.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 50 CFR 648.290(c) state that any overages of the quota for any tilefish limited access category that occur in a given fishing year will be subtracted from the quota for that category in the following fishing year. This same section also states that, if the tilefish harvest attributed to the open access Incidental permit category exceeds 5 percent of the total allowable landings (TAL) for a given fishing year, the trip limit for the Incidental category may be reduced the following year. In both of these instances, § 648.290(c) specifies that, if an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

The tilefish TAL for FY 2007 remains unchanged from FY 2006 at 1.995 million lb (905 mt). The FMP requires that the TAL be divided between the three limited access tilefish permit categories after the TAL is reduced by 5 percent to account for incidental tilefish landings (open-access Incidental permit category) as follows: Sixty-six percent (1,250,865 lb (466,875 kg)) to Full-time Tier 1; 15 percent (284,288 lb (106,108 kg)) to Full-time Tier 2; and 19 percent (360,098 lb (163,338 kg)) to Part-time vessels.

Based upon vessel reports and other information available as of October 20, 2006, FY 2006 tilefish landings for limited access Part-time permit category were 453,033 lb (205,492 kg), resulting in an overage of 92,935 lb (42,155 kg). This overage amount is being deducted from the FY 2007 Part-time permit category quota through this action, which results in an adjusted quota of 267,163 lb (121,183 kg) for this category in FY 2007. Adjustments to the remaining permit categories are not needed, and the FY 2007 quotas for these categories, therefore, remain status quo, including the Incidental trip limit for tilefish for FY 2007, which will remain at its default value of 300 lb (136 kg).

The FY 2006 tilefish Part-time permit category quota, the FY 2006 tilefish Part-time permit category landings, and the resulting overage of the FY 2006 tilefish Part-time permit category quota are presented in Table 1. The resulting adjusted FY 2007 tilefish Part-time permit category commercial quota is presented in Table 2.

TABLE 1. TILEFISH PART-TIME CATEGORY 2006 LANDINGS AND OVERAGE

Permit Category	2006 Quota		2006 Landings		2006 Overage	
	Lb	kg[1]	Lb	Kg[1]	Lb	Kg[1]
Part-time	360,098	163,338	453,033	205,492	92,935	42,155

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

TABLE 2. TILEFISH PART-TIME CATEGORY ADJUSTED FY 2007 QUOTA

Permit Category	2007 Initial Quota		2007 Adjusted Quota	
	Lb	Kg[1]	Lb	Kg[1]
Part-time	360,098	163,338	267,163	121,183

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as notice and comment would be impracticable and unnecessary. The regulations under § 648.290(c) requires the Regional Administrator to subtract any overage of the quota for any tilefish limited access category from the quota for that category in the following fishing year. Accordingly, the action being taken by this temporary rule is nondiscretionary. The procedure being followed by this action was subject to public comment, but there is no discretion to modify this action based on public comment at this time. The rate of harvest of tilefish by the Part-time permit category is updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide some advanced notice of a potential action as a result of a tilefish quota being exceeded during FY 2006. Further, the potential for this action was considered and open to public comment during the development of the tilefish FMP. Therefore, any negative effect the waiving of public comment may have on the public is mitigated by these factors.

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

Dated: October 24, 2006.

James P. Burgess,

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

[FR Doc. 06–8981 Filed 10–26–06; 2:50 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060606148–6274–02; I.D. 112805A]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Revision to the Final 2006 and 2007 Harvest Specifications for Groundfish

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

ACTION: Final rule.

SUMMARY: NMFS announces revised final 2006 and 2007 harvest specifications for the ''other species'' complex in the Gulf of Alaska (GOA) by

reducing the total allowable catch (TAC) for the complex to 4,500 metric tons (mt) annually. This rule also revises the 2006 and 2007 ''other species'' harvest sideboard limitations for non-exempt American Fisheries Act (AFA) catcher vessels and non-AFA crab vessels. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective at 1200 hrs, Alaska local time (A.l.t.), November 30, 2006 through 2400 hrs, A.l.t., December 31, 2007.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh or from the Alaska Region Web site at *http://www.fakr.noaa.gov*. Copies of the 2005 Stock Assessment and Fishery Evaluation report for the groundfish resources of the GOA, dated November 2005, are available from the North Pacific Fishery Management Council (Council), 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from its website at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the GOA (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

On February 13, 2006, the Secretary of Commerce approved Amendment 69 to the FMP. A final rule implementing the amendment was published in the **Federal Register** on March 13, 2006 (71 FR 12626). Amendment 69 and its implementing rule modify the TAC calculation for the ''other species'' complex from a fixed 5 percent of the sum of target species annual TACs to an amount less than or equal to this percentage. The intent of this adjustment is to prevent overfishing of species within the ''other species'' complex. The TAC for the ''other species'' complex will continue to be established during the annual harvest specification process set forth in regulations at § 679.20. Under this process, the Council recommends a TAC consistent with the provisions set forth under Amendment 69 that then is forwarded to the Secretary of Commerce for review and approval.

The final 2006 and 2007 harvest specifications for groundfish in the GOA were published in the **Federal Register** on March 3, 2006 (71 FR 10870). Under these specifications, the 2006 and 2007 TACs for the ''other species'' complex are 13,856 mt and 12,229 mt, respectively. These TACs are equal to 5 percent of the sum of the target species TACs. In December 2005, the Council recommended that the ''other species'' TAC be reduced to 4,500 mt pending the approval of Amendment 69. This final rule implements the Council's recommendation for the ''other species'' TAC and revises the 2006 and 2007 harvest specifications accordingly.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the TAC for each target species and for the ''other species'' category, the sum of which must be within the optimum yield range of 116,000 mt to 800,000 mt. Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on the proposed harvest specifications. The proposed revisions of the 2006 and 2007 TAC for the ''other species'' complex in the GOA were published in the **Federal Register** on July 11, 2006 (71 FR 39046). Comments were invited and accepted through August 10, 2006. No comments were received regarding the proposed reduction to the TAC for the ''other species'' complex. Therefore, NMFS is implementing the Council's recommendation to reduce the TAC for the ''other species'' complex in 2006 and 2007 to 4,500 mt. This adjustment reduces the total GOA 2006 TAC to 291,948 mt, a difference of 9,356 mt. Similarly, the total GOA 2007 TAC is reduced to 273,911 mt, a difference of 7,729 mt.

The Council's recommendation in December 2005 was based on the GOA Plan Team's 4,000 mt estimate of the annual incidental catch of ''other species'' in the targeted groundfish and Pacific halibut fisheries, the Council Advisory Panel's recommendation, and public testimony. A 4,500 mt TAC for the ''other species'' complex allows for incidental catch needs and a small directed fishery for ''other species'' of approximately 500 mt in each year.

As a result of lowering the TAC for ''other species,'' NMFS is also proportionately lowering the 2006 and 2007 ''other species'' harvest sideboard limitations for non-exempt AFA catcher vessels and non-AFA crab vessels. For 2006 and 2007, the ''other species'' harvest sideboard limitation for non-exempt AFA catcher vessels is reduced to 40 mt from 125 mt in 2006 and 110 mt in 2007. For 2006 and 2007, the ''other species'' harvest sideboard limitation for non-AFA crab vessels is reduced to 79 mt from 244 mt in 2006 and 215 mt in 2007. There are no changes from the proposed rule to reduce the 2006 and 2007 TACs for the ''other species'' complex in the GOA (July 11, 2006, 71 FR 39046).

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measure is to reduce the 2006 and 2007 TAC for the ''other species'' complex in the GOA to 4,500 mt. This action is necessary to revise the TACs for the ''other species'' complex and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fishery. NMFS will announce closures to directed fishing in the **Federal Register**.

Classification

A FRFA was prepared to evaluate the impacts of the 2006 and 2007 final harvest specifications on directly regulated small entities following Secretarial approval of Amendment 69 to the GOA FMP. This FRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA). A copy of the FRFA is available from NMFS (see **ADDRESSES**). The reason for the action, a statement of the objective of the action, and the legal basis are discussed in the FRFA and in the preamble of this final rule and are not repeated here. No comments were received on the IRFA or the economic impacts of this rule.

The 2006 and 2007 harvest specifications establish harvest limits for the groundfish species and species groups in the GOA. Entities directly impacted are those fishing for groundfish in the exclusive economic zone or in parallel fisheries in State of Alaska waters (in which harvests are counted against the Federal TAC). An estimated 782 small catcher vessels and 18 small catcher processors may be directly regulated by these harvest specifications in the GOA. The catcher vessel estimate in particular is subject to various uncertainties. It may provide an underestimate because it does not count vessels that fish only within State of

Alaska waters. This may be offset by upward biases introduced by the use of preliminary price estimates (which do not fully account for post-season price adjustments) and by a failure to account for affiliations, other than AFA cooperative affiliations, among entities. For these reasons the catcher vessel estimate must be considered an approximation.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the final action.

The FRFA prepared for this final action examined the status quo, or no action alternative, in relation to reducing the TAC for the ''other species'' complex to 4,500 mt. A TAC of 4,500 mt exceeds the estimated annual incidental catch needs in the groundfish and Pacific halibut fisheries while allowing for a limited (approximately 500 mt annually) directed fishery for the ''other species'' complex and the development of markets for these species.

The EA/Regulatory Impact Review/FRFA prepared for Amendment 69 examined a range of TAC setting alternatives. Alternative 1 would have been the status quo, or no action alternative, and the TAC for the ''other species'' complex would continue to be set at 5 percent of the sum of other targeted species TACs. This alternative was not selected for because it would not meet the conservation objectives. If the TAC were set at this level (and fully harvested) it would most likely not be sustainable. If a single species in the complex were targeted to the exclusion of other species in the complex that targeted species would likely experience overfishing. Alternative 3 would have set the TAC at a level anticipated to meet incidental catch needs in other directed fisheries. This alternative was not selected because, while it would have allowed retention of up to 20 percent of marketable ''other species,'' it would have precluded the possibility of future development of directed fisheries targeting ''other species.'' Alternative 2, the alternative selected by the Council and implemented by this final rule, gave the Council the greatest amount of flexibility to recommend a TAC up to 5 percent of the sum of the target species TACs. This allows the Council to recommend a TAC sufficient to meet incidental catch needs in other directed fisheries while allowing for the development of sustainable fisheries targeting ''other species.'' The FRFA prepared for Amendment 69 determined that any of the alternatives considered would not adversely impact small entities.

The FRFA prepared for this final rule specifically examined the impacts of setting the TAC for the ''other species'' complex at 4,500 mt, as recommended by the Council, versus 5 percent of the sum of targeted species TACs that was in effect at the time the final 2006 and 2007 harvest specifications for groundfish in the GOA were implemented in March 2006. The FRFA concluded that the final action does not appear to create adverse impacts on directly regulated small entities.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; and 3631 *et seq.*

Dated: October 24, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E6–18293 Filed 10–30–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 210
Tuesday, October 31, 2006

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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0002]

RIN 0579–AB91

Boll Weevil; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The proposed regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States and the reinfestation of areas from which the boll weevil has been eradicated.

DATES: We will consider all comments that we receive on or before January 2, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0002 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0002, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0002.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. William Grefenstette, National Coordinator, Boll Weevil Eradication Program, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737–1236; (301) 734–8676.

SUPPLEMENTARY INFORMATION:

Background

The boll weevil, *Anthonomus grandis,* is a very destructive pest of cotton. This pest can cause serious economic losses by lowering the yield and quality of cotton crops. All portions of the plant may be affected, but the greatest damage occurs to the fruiting structures such as the flower buds, blooms, and bolls. This damage reduces the quality and quantity of the harvested lint or seed. Heavy infestations can result in complete loss of the crop.

Cotton production is an important element of the U.S. agricultural economy. It is the fourth most valuable crop in the United States after corn, soybeans, and wheat, with cotton production in 2003 valued at $5.5 billion, and cottonseed production at $779 million. Cotton and cotton products exported by the United States generated $5.2 billion. The boll weevil is the principal pest of this major industry, having caused losses to the nation's economy estimated at $22 billion since its introduction into the United States. Boll weevil eradication efforts have provided stability for the U.S. cotton industry and strengthened its ability to compete on the world market.

The current boll weevil eradication program is a cooperative Federal, State, and industry effort that has helped to reduce cotton losses to the boll weevil in recent years. A number of formerly infested States or portions of States are now free of this pest. Growers have benefited from significantly lower production costs and higher yields. Without effective quarantine measures, however, these higher yields would not be realized. It is also possible that, because of reinfestation, losses will again begin to mount in areas in which the boll weevil had been previously eradicated.

Because the boll weevil is a migratory pest, it is necessary for States to cooperate within regions to ensure the success of control programs. These control programs have been voluntary in the past and as a result we are very close to eradicating this pest. Although some individual growers have successfully controlled boll weevils in their fields, neighboring areas often contribute to reinfestations. The boll weevil's movement is largely dependent on wind direction and speed, but it has been known to travel up to 169 miles, often causing reinfestations across State lines.

Officials of the Animal and Plant Health Inspection Service (APHIS), cotton grower foundations, and affected States have conducted successful eradication programs over the years, moving sequentially across the infested areas. This has been achieved in the context of zones within States that have agreed to engage in eradication activities and place restrictions on the movement of certain articles from infested suppressive areas to prevent the spread of the boll weevil throughout cotton-producing States. We believe that Federal regulations are necessary to restrict the interstate movement of certain articles from areas which may become generally infested in the future and from current suppressive areas to help prevent the artificial spread of the boll weevil to noninfested areas. This is to encourage all cotton producers to remain diligent in their participation of eradication activities.

We are proposing to amend the domestic quarantine notices in 7 CFR part 301 by adding a new subpart, ''Boll Weevil'' (§§ 301.54 through 301.54–9, referred to below as the regulations). The regulations would provide for the designation of regulated areas, both

generally infested and suppressive areas, within cotton-producing States because of the boll weevil. The regulations would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton producing States. These proposed provisions are described in detail below.

Restrictions on Interstate Movement of Regulated Articles (Proposed § 301.54)

In § 301.54, paragraph (a) would prohibit the interstate movement of regulated articles from any regulated area into or through any commercial cotton-producing area except in accordance with the regulations. This paragraph would also contain a footnote explaining that any properly identified inspector is authorized, upon probable cause, to stop and inspect persons and means of conveyance moving in interstate commerce and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714, 7731). Paragraph (b) of this section would contain a list of States designated as commercial cotton-producing areas. These States are Alabama, Arizona, Arkansas, California, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

Definitions (Proposed § 301.54–1)

Section 301.54–1 would contain definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service (APHIS), boll weevil, certificate, compliance agreement, cotton, cotton lint, cotton products, departmental permit, generally infested area, gin motes, gin trash, gin waste, infestation, inspector, interstate, limited permit, linters, moved (move, movement), oil mill waste, person, Plant Protection and Quarantine (PPQ), regulated area, regulated article, seed cotton, State, suppressive area,* and *used cotton equipment.* These terms and their proposed definitions are set out in the proposed regulatory text at the end of this document.

Regulated Articles (Proposed § 301.54–2)

Certain articles present a risk of spreading the boll weevil if they are moved from regulated areas without restrictions. We call these articles regulated articles, and would impose restrictions on their movement because the boll weevil can survive in these materials if present and could possibly be transported to noninfested areas. Paragraphs (a) through (f) of § 301.54–2 list the following as regulated articles:

- The boll weevil, in any living stage of development;
- Cotton, including wild cotton and ornamental cotton, but excluding commercial bales and cottonseed;
- Seed cotton;
- Gin trash;
- Used cotton harvesting or processing equipment; and
- Any other product, article, or means of conveyance when an inspector determines that it presents a risk of spreading the boll weevil and the person in possession of the product, article, or means of conveyance has been notified in writing that it is subject to the restrictions in the regulations.

The last item listed above, which provides for the designation of ''any other product, article, or means of conveyance'' as a regulated article, is intended to address the risks presented by, for example, a truck that may have inadvertently picked up plant material or adult boll weevils while driving through fields, thus enabling an inspector to designate that truck as a regulated article in order to ensure that any necessary risk-mitigating measures are carried out.

Regulated Areas (Proposed § 301.54–3)

Paragraph (a) of § 301.54–3 would provide the criteria for the inclusion of States, or portions of States, in the list of regulated areas. Under these criteria, any State or portion of a State in which the boll weevil is found by an inspector, in which the Administrator has reason to believe that the boll weevil is present, or when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which the boll weevil has been found, will be listed as a regulated area. These criteria also provide that an area will be designated as a regulated area when the Administrator determines that minimum pest surveillance and control activities are not maintained (see following paragraph for a discussion about these activities). As noted previously, eradication efforts are underway in some States or portions of States. Thus, this paragraph would also provide that the Administrator may designate a part of a regulated area as a suppressive area after determining that eradication of infestation is being undertaken as an objective in that part of the regulated area; any part of a regulated area that is not designated as a suppressive area will be designated as a generally infested area.

We are proposing that each cotton-producing State, or legally defined zone within a State, would be designated as a regulated area when growers fail to maintain minimum pest surveillance and control activities to prevent reinfestation of that area as well as surrounding areas by the boll weevil. These activities would consist of the annual installation and monitoring of boll weevil pheromone traps, and the application of effective control measures if boll weevils are detected. APHIS would work with entomological experts to determine appropriate minimum trapping densities in each particular area; trapping densities would be based on an area's proximity to existing infestations and susceptibility to reinfestation. Effective control measures would involve the demonstrated ability to apply in a timely manner, by aircraft or ground equipment, materials that have proven effective in eradicating the boll weevil. Such applications would have to be made within 48 hours of detecting a reinfestation. Failure by cotton growers within a State or zone where boll weevil is not known to be present to maintain the prescribed minimum standards of detection and control would result in the area being listed as a regulated area. We invite comment on our proposed requirements for minimum pest surveillance and control activities.

Paragraph (a) of § 301.54–3 would also provide that we will designate less than an entire State as a regulated area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a regulated area will prevent the interstate spread of the boll weevil. In practice, the latter determination—that the designation of less than an entire State will prevent the interstate spread of the boll weevil—would be based, at least in part, on our finding that infestations are confined to the regulated areas as a result of natural breaks between infested areas and noninfested areas, known as zones, and would eliminate the need for designating an entire State as a regulated area. APHIS would adopt existing buffer zones that have been established under the States' current eradication programs.

Paragraph (b) of § 301.54–3 would provide that we may temporarily designate any nonregulated area in a State as a regulated area when we determine that the nonregulated area meets the criteria for designation as a

regulated area described in § 301.54–3(a). In such cases, we will give the owner or person in possession of the nonregulated area a copy of the regulations along with written notice of the area's temporary designation as a regulated area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the spread of the boll weevil during the time between the detection of the pest and the time a document designating the area as a regulated area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary regulated area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

Paragraph (c) lists the proposed regulated areas. These areas, as noted previously, would be divided into generally infested (areas that do not operate under an area-wide, APHIS-endorsed control program) and suppressive areas (areas engaged in an area-wide eradication program supported by APHIS). The proposed regulated areas, all of which are designated as suppressive areas, are listed in the rule portion of this document and include all or portions of the States of Arkansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee, and Texas. The list of regulated areas was derived from information [1] provided to APHIS by State regulatory officials and cotton foundation program directors indicating evidence of boll weevil in the areas.

Conditions Governing the Interstate Movement of Regulated Articles From Regulated Areas (Proposed § 301.54–4)

This section would require most regulated articles moving interstate from regulated areas to be accompanied by a certificate or a limited permit if moved into commercial cotton-producing areas. Specifically, paragraph (a) of proposed § 301.54–4 would provide that a certificate or limited permit issued and attached in accordance with §§ 301.54–5 and 301.54–8 would have to accompany regulated articles moving interstate:

- From any regulated area into or through any nonregulated area that is located in a commercial cotton-producing area listed in § 301.54(b);
- From any generally infested area into or through any suppressive area; [2] or
- Between any noncontiguous suppressive areas; or
- Between contiguous suppressive areas when it is determined by the inspector that the regulated articles present a hazard of the spread of the boll weevil and the person in possession thereof has been so notified.

Under paragraph (b) of proposed § 301.54–4, a certificate or limited permit would not be required for the movement of regulated articles into areas that are not commercial cotton-producing areas. Given the host specificity of the boll weevil, there would be little, if any, risk associated with the movement of regulated articles into areas that are not commercial cotton-producing areas due to the lack of host material for the pest.

Under paragraph (c) of proposed § 301.54–4, articles that are moved into the regulated area from outside the regulated area and that are accompanied by a waybill that indicates the point of origin may be moved interstate from the regulated area to commercial cotton-producing areas without a certificate or limited permit, provided certain conditions are met. The articles would have to be moved in an enclosed vehicle or be completely enclosed by a covering adequate to prevent access by the boll weevil. The regulated articles would also have to be moved through the regulated area without stopping (except for refueling, rest stops, emergency repairs, and for traffic conditions such as traffic lights and stop signs), and the regulated articles could not be opened, unpacked, or unloaded in the regulated area.

Finally, paragraph (d) of proposed § 301.54–4 would provide that APHIS or the U.S. Department of Agriculture (the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles would have to be moved in accordance with a departmental permit issued by the Administrator, under conditions specified on the permit to prevent the spread of the boll weevil, and with a tag or label bearing the number of the departmental permit attached to the regulated article or to the outside of its container.

Issuance and Cancellation of Certificates and Limited Permits (Proposed § 301.54–5)

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is free of boll weevil), there is no pest risk before movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.54–5 would explain the conditions for issuing a certificate or limited permit.

Specifically, § 301.54–5(a) would provide that a certificate may be issued by an inspector for the interstate movement of a regulated article if the inspector determines that the article: (1) Is free of the boll weevil, has been treated under the direction of an inspector in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, or comes from a premises of origin that is free of the boll weevil; (2) will be moved through the regulated area in an enclosed vehicle or will be completely covered to prevent access by the boll weevil; (3) will be moved in compliance with any additional remedial conditions deemed necessary to prevent the spread of the boll weevil under section 414 of the Plant Protection Act (7 U.S.C. 7714); and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine (PPQ) offices at which services of inspectors may be requested. We have also included a footnote that explains that the Secretary of Agriculture may, under the Plant Protection Act, take remedial actions to hold, seize, quarantine, treat, destroy, apply other remedial measures to, or otherwise dispose of articles that he or she has

[1] This information is available from the person listed under **FOR FURTHER INFORMATION CONTACT**. It may also be reviewed in our reading room. See **ADDRESSES** above for the location and hours of the reading room.

[2] As defined in proposed § 301.54–1, a suppressive area is that part of a regulated area where eradication of infestation under an area-wide, APHIS-endorsed control program is undertaken as an objective. Generally infested areas (none currently exist) are those regulated areas in which the growers are not currently participating in such a program. Articles moved from a suppressive area would be more likely to qualify for movement based on premises inspection, while each consignment shipped from a generally infested area would have to be individually inspected or treated due to the unchecked presence of weevils within such an area.

reason to believe are a plant pest or are infested with a plant pest.

Paragraph (b) of § 301.54–5 would provide for the issuance of a limited permit (rather than a certificate) by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved interstate to a specified destination for specified handling, utilization, or processing, and that the movement will not result in the spread of the boll weevil because life stages of the boll weevil will be destroyed by the specified handling, utilization, or processing. A limited permit will only be issued if the regulated article: (1) Will be moved in an enclosed vehicle or completely covered to prevent access by, and escape of, the boll weevil; (2) will be moved in compliance with any additional remedial conditions imposed by the Administrator under sections 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the boll weevil; and (3) if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (c) of § 301.54–5 would provide that any person who has entered into and is operating under a compliance agreement may issue a certificate or limited permit for the interstate movement of a regulated article after determining that the article is otherwise eligible for a certificate or limited permit under § 301.54–5(a) or (b), respectively.

Also, § 301.54–5(d) would contain provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This paragraph would also contain provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Compliance Agreements and Cancellation (Proposed § 301.54–6)

Section 301.54–6 would provide for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from regulated areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance agreement has been made aware of the requirements of the regulations and the person has agreed to comply with the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote that explains where compliance agreement forms may be obtained.

Section 301.54–6 would also provide that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Assembly and Inspection of Regulated Articles (Proposed § 301.54–7)

Section 301.54–7 would provide that any person (other than a person authorized to issue certificates or limited permits under § 301.54–5(c)) who desires a certificate or limited permit to move regulated articles interstate must request, at least 48 hours before the desired movement, that an inspector issue a certificate or limited permit. The regulated articles would have to be assembled in a place and manner directed by the inspector.

Attachment and Disposition of Certificates and Limited Permits (Proposed § 301.54–8)

Section 301.54–8 would require the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the consignee's copy of the accompanying waybill. Further, the section would require that the carrier or the carrier's representative furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

Costs and Charges (Proposed § 301.54–9)

Section 301.54–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are proposing to establish domestic regulations for the boll weevil (*Anthonomus grandis*) that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The proposed regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States, and the reinfestation of areas from which the boll weevil has been eradicated.

For this proposed rule, we have prepared an economic analysis. The economic analysis, which is set out below, provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects of this proposed rule on small entities as required by the Regulatory Flexibility Act.

All cotton-producing areas in the United States are either free of boll weevil or in the process of eliminating the pest through State-sanctioned eradication efforts. These initiatives receive Federal support and are collectively referred to as the cooperative boll weevil eradication program. The areas where the boll weevil is still present, but where growers are participating in the eradication efforts, are categorized as suppressive areas. Suppressive areas are present in the States of Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. Previously, Texas and other States also contained areas known as generally infested, where producers had not entered into the voluntary State-sanctioned eradication programs. However, these areas have since also joined the cooperative efforts.

Therefore, all cotton-producing areas in the United States are now categorized as either pest-free or suppressive areas, and all areas where the pest is present are involved in eradication. Most areas have already eliminated the boll weevil. The remaining areas that are in the process of doing so are expected to achieve eradication over the next few years. States with suppressive areas impose controls on the intrastate movement of regulated material to pest free areas. These intrastate controls are

essentially the same as the proposed interstate regulations.

Benefits and Costs of the Rule

The primary benefits of the proposed Federal controls on the interstate movement of regulated articles are to help prevent the artificial spread of boll weevil into noninfested areas of the United States, and to strengthen the effort of the States to prevent reinfestation of areas from which the pest has been eradicated. The regulations also are expected to contribute to boll weevil eradication, over and above what would be accomplished under the voluntary cooperative eradication program.

Because the boll weevil is a migratory pest, it is necessary for States to cooperate within regions to ensure the success of control programs. Although individual growers have successfully controlled boll weevils in their fields, neighboring infested areas can contribute to reinfestations. In order to encourage all cotton producers to remain diligent in their participation in eradication activities, we believe that Federal regulations are necessary to restrict the interstate movement of certain articles from areas which may become generally infested in the future and from current suppressive areas to help prevent the artificial spread of the boll weevil to noninfested areas.

Cotton production is an important element of the U.S. agricultural economy. In 2004, cotton production was valued at $5.3 billion, cottonseed production at $874 million, and cotton and cotton products exported at $6.4 billion. The boll weevil is a destructive pest of cotton, and is the principal pest of this major industry. It causes economic losses by lowering the yield and quality of cotton, and heavy infestations can result in complete loss of the crop. The boll weevil arrived in the United States from Mexico in 1892, and has since caused an estimated $22 billion in yield losses and control costs to the U.S. cotton industry.

In those areas where the boll weevil has been eradicated, cotton growers have benefited from lower costs of production because of reduced pesticide use, and from higher yields that have led to increased land values and expanded cotton acreage. Pesticide savings of between 40 and 90 percent have been realized, and many cotton growers have been able to forgo pesticide use entirely. Yield increases of 10 to 20 percent have been achieved in areas where this pest has been eliminated. Without effective quarantine measures, however, these higher yields would not be realized. It is also possible that, because of reinfestation, losses will again begin to mount in areas in which the boll weevil had previously been eradicated.

Boll weevil eradication efforts have provided stability for the U.S. cotton industry and strengthened its ability to compete in the world market. Various formerly infested States or portions of States are now free of this pest. As areas become boll weevil-free, eradication costs have declined. Over the 4-year period 1999–2002, national program costs totaled $1.019 billion, compared to $585 million spent over the following 4 years, 2003–2006. Recent yearly costs have declined rapidly, from $245 million in 2002, to $125 million in 2006. (All dollar amounts are unadjusted for inflation.) The major cost areas are labor, treatments (chemicals and application), trapping supplies, and vehicles and transportation. The APHIS share of these costs has been between 25 and 30 percent. But the benefits exceed even such high expenditures, and extend beyond the cotton industry to related sectors of the national economy as well as to the local economies in cotton-producing areas.

The extent of the reduction in risk that would be achieved with the regulations cannot be determined, since we do not know the likelihood of interstate movement of infested articles from the suppressive areas. However, we do know that reinfestation of areas where the pest had been eradicated can be costly.

The Southeastern Boll Weevil Eradication Foundation has tracked the costs associated with boll weevil reintroductions and reinfestations in six southeastern States between 1987 and 2004. The cost approximations are based on incomplete work unit records, but nonetheless clearly indicate the benefits of prevention and, when reinfestations occur, of limiting their size through early detection and rapid control. About half of the affected counties reported reinfestations in various years that cost less than $10,000, with fewer than 10 weevils discovered. Other counties reported much larger reinfestations and eradication costs, ranging up to $1.3 million spent in Orangeburg County, SC, between 1995 and 1997, where 23,899 weevils were detected and eliminated.

As with the expected benefits, the costs of the proposed regulations would derive from controls on the interstate movement of regulated articles from regulated areas. Costs are expected to be incurred primarily by entities such as custom harvester operators and other agricultural service providers who move regulated articles from the infested areas. Specific costs would depend on the types of regulated articles moved, unit costs of disinfestation, and the frequency of interstate movement.

Methods of boll weevil disinfestation range widely, from hand removal of leaves and sweeping of foreign material with brooms, to more costly methods such as compressed air blowing, high-pressure washing, and fumigation. Unit costs also range widely, from $4 for hand sweeping of a truck bed, to as much as $800 for the fumigation of harvesting equipment such as pickers and strippers.

Relatively few cotton growers or gin operators are expected to be affected, since most cotton is grown and ginned within the same area, and baled cotton and cottonseed are not regulated articles. Custom harvesters and other agricultural service providers who move regulated articles from infested areas would be affected, but the impact on such entities is not expected to be large. Fumigation of a cotton harvester is estimated to cost about $800, less than 1 percent of annual receipts for a representative operator. APHIS estimates that as many as 100 custom harvesters would be affected by this rule. With establishment of the proposed regulations, owners of such equipment could be expected to schedule harvesting contracts so as to minimize the number of interstate movements from infested areas during a season.

APHIS is proposing that each cotton-producing State, or legally defined zone within a State, would be designated as a regulated area when growers fail to maintain minimum pest surveillance and control activities to prevent reinfestation of that area as well as surrounding areas by the boll weevil. These activities would consist of the annual installation and monitoring of boll weevil pheromone traps, and the application of effective control measures if boll weevils are detected. Failure by cotton growers within a State or zone where boll weevil is not known to be present to maintain prescribed minimum standards of detection and control would result in the area being listed as a regulated area. The cost of these activities should be less than $2 per acre, but may vary depending on proximity to regulated areas. Under the current boll weevil eradication program, surveillance and control activities are already required in areas from which the pest has been eradicated. We expect that these surveillance and control costs would continue to be incurred even without promulgation of this rule.

A numerical comparison of expected benefits and costs of the regulations is not possible, since we cannot estimate the reduction in the risk of spread that would be attributable to the proposed regulations, nor can we predict aggregate expenditures by directly affected entities. However, given the sizable benefits that boll weevil eradication has afforded cotton growers and others in areas where this pest has been eliminated and the relatively small cost of disinfestation of regulated articles moved interstate, APHIS believes the net benefit of the regulations would be positive.

Costs to APHIS of administering the rule would differ little from the Agency's current costs of participating with producers and States in the National Boll Weevil Cooperative Control Program, whereby APHIS is contributing about 25 to 30 percent of total eradication expenditures. Federal appropriations for the program have fallen from about $77 million in 2002, to less than $39 million in 2006. Once nationwide eradication has been accomplished, APHIS participation in funding post-eradication annual surveys, expected to cost between $5 million and $7 million per year, would depend on Congressional direction. The cost to APHIS of funding eradication activities in areas that become reinfested depends on the size of the outbreak, and has ranged from tens of thousands to hundreds of thousands of dollars.

Alternative to the Rule

An alternative to the regulations would be to take no action, that is, not establish Federal controls on the interstate movement of regulated articles. If this alternative were selected, nationwide eradication could be delayed. There would be increased risk of reinfestation and production losses in cotton-producing areas where the pest has been eliminated. Current State regulations have been fairly effective in preventing the artificial movement of boll weevils from infested areas into noninfested areas. However, the long-term protection of these areas can be significantly enhanced by the proposed Federal regulations.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed rules on small entities. We address here the requirements of an initial regulatory flexibility analysis, and welcome public comment on expected small entity effects of this rule.

Reasons Why Action by APHIS is Being Considered

APHIS is proposing Federal controls on the interstate movement of regulated articles to help prevent the artificial spread of the boll weevil into noninfested areas of the United States. Most commercial cotton-producing areas of the United States have already eliminated the boll weevil. Complete elimination of this pest is expected to be achieved over the next few years, as long as reinfestation of areas from which the pest has been eradicated is prevented. Through the cooperative boll weevil eradication program, States with suppressive areas, that is, areas in the process of eliminating the pest through APHIS-endorsed, area-wide control programs, impose controls on the intrastate movement of regulated material to pest-free areas. The proposed interstate movement restrictions would complement these intrastate controls. The rule is expected to contribute to boll weevil eradication, over and above what would be accomplished under the voluntary cooperative eradication program.

Objective and Legal Basis

The objective of the proposed rule is to minimize risks of infestation or reinfestation of boll weevil-free areas through the interstate movement of regulated articles and thereby hasten the Nation's eradication of this pest. Current State regulations have been fairly effective in preventing the artificial movement of the boll weevil from infested areas into noninfested areas. The long-term protection of noninfested areas can be significantly enhanced by the proposed regulations.

In accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the spread of plant pests within the United States, which includes regulating the interstate movement of any product, article, or means of conveyance that presents a risk of spreading the boll weevil.

Potentially Affected Small Entities

The principal entities engaged in cotton production—growers, gin operators, and agricultural service providers such as custom harvesters—are mainly small entities, and the economic effects for them would be the same as has been described generally. Small entities in nonregulated areas would benefit from a reduced risk of boll weevil infestation. Entities that move regulated articles from infested areas into noninfested areas would bear certain costs of complying with the regulations.

As indicated in table 1, more than 81 percent of cotton farms and more than 76 percent of ginning establishments are small entities, based on small-entity definitions of annual receipts of not more than $750,000 and not more than $6.5 million, respectively. Small entity cotton farms and ginning establishments in areas free of the boll weevil would benefit from the reduction in risk of infestation or reinfestation provided by the rule.

The soil preparation, planting, and cultivation industry includes businesses that provide fertilizer and cultivation services; soil treatments; crop spraying; and disease, insect, or weed control services. Small entities in this industry are establishments that have annual receipts of not more than $6.5 million. Information is not available on the percentage of these establishments that are small, but we expect that they represent the majority, since 96 percent of these businesses have fewer than 20 employees. We are unable to estimate the number of small entity agricultural service providers that may be affected by this rule.

TABLE 1.—SMALL ENTITY REPRESENTATION IN INDUSTRIES THAT MAY BE AFFECTED BY THE PROPOSED RULE

Industry (NAICS code) [1]	Small entity definition [2]	Number of establishments	Number of small entities	Percentage of establishments that are small entities
Cotton farming [3] (111920)	Less than or equal to $0.75 million annual receipts.	24,721	Fewer than 20,042	Less than 81.
Cotton ginning [4] (115111)	Less than or equal to $6.5 million annual receipts.	887	Fewer than 671	Less than 76.
Soil preparation, planting, and cultivating [5] (115112).	Less than or equal to $6.5 million annual receipts.	2,394	Not known	Not known.

TABLE 1.—SMALL ENTITY REPRESENTATION IN INDUSTRIES THAT MAY BE AFFECTED BY THE PROPOSED RULE—Continued

Industry (NAICS code) [1]	Small entity definition [2]	Number of establishments	Number of small entities	Percentage of establishments that are small entities
Crop harvesting, primarily by machine [5] (115113).	Less than or equal to $6.5 million annual receipts.	368	Not known	Not known.

[1] North American Industry Classification System.
[2] *http://www.sba.gov/size/sizetable2002.html.*
[3] NASS, 2002 Census of Agriculture, Volume 1, Table 56. The 20,042 cotton and cottonseed farms sold agricultural products valued at less than $500,000 in 2002.
[4] NASS, Cotton Ginnings 2005 Summary, May 2006, and 2005 Agricultural Statistics. In the 2005 crop year, there were 671 active gins that ginned fewer than 20,000 running bales. (A running bale is approximately equal to 1.03 ginned bales.) The average value of a ginned bale in 2004 was $230. Thus, annual receipts per establishment for the 671 gins were less than $4.6 million.
[5] Census Bureau, 2003 County Business Patterns for the United States, *http://www.census.gov/epcd/cbp/view/us03.txt.* Size distributions for industries are described by the Census Bureau in terms of number of employees, not annual receipts. The employment patterns for these industries suggest that they are primarily composed of small entities. For the soil preparation, planting, and cultivating industry, 96 percent of establishments (2,294) had fewer than 20 employees in 2003. For the crop harvesting, primarily by machine, industry, 92 percent of establishments (337) had fewer than 20 employees in 2003.

Similarly, the small entity definition for harvesting operations is annual receipts of not more than $6.5 million. While we do not know the percentage of these establishments with receipts that fall below this threshold, we note that 92 percent of harvesting businesses have fewer than 20 employees. Custom harvesters and other agricultural service providers are types of firms that may be affected by the proposed rule because of their movement from regulated areas to or through nonregulated areas. APHIS estimates that as many as 100 small entity cotton harvester operators may be affected by this rule.

The information shown in table 1 on numbers of establishments in the soil preparation, planting, and cultivating industry and in the crop harvesting industry is for all crops. We believe the predominance of small entities in these industries overall holds as well for the cotton sector.

APHIS welcomes information that the public may provide on the number of small entities in the identified industries that may be affected by the proposed rule, as well as information on small entities in other industries that the public believes may be affected.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Regulated articles moving interstate from regulated areas would be required to be accompanied by a certificate or a limited permit if moved into nonregulated, commercial cotton-producing areas. The proposed rule would also provide for the use of compliance agreements, for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from regulated areas. The reporting and recordkeeping requirements associated with this proposed rule are described below under ''Paperwork Reduction Act.''

Relatively few cotton growers or gin operators are expected to be affected by the proposed rule, since most cotton is grown and ginned within the same area, and baled cotton and cottonseed are not regulated articles. The largest treatment cost may be borne by operators of harvesters and other major machinery. Based on a unit fumigation cost for harvesting equipment of $800, and a single movement per season from a regulated to a nonregulated area, the cost per harvester would be $800, and industry-wide, $80,000, assuming 100 harvesting equipment operators would be affected.[3] The fumigation cost per harvester and the single movement per season requiring fumigation are APHIS estimates based on information provided by industry. This annual cost of $800 is estimated to be less than 1 percent of annual receipts for a representative operator. APHIS welcomes public comment that would enable us to more fully understand possible costs associated with the proposed rule's compliance requirements.

Growers in areas from which the boll weevil has been eradicated would be required to maintain minimum weevil surveillance and control activities to prevent reinfestation, whether or not they move regulated articles interstate. Since these surveillance and control activities are already required under the current boll weevil eradication program in areas from which the pest has been eradicated, their cost (estimated by APHIS to average about $2 per acre per year) would continue to be incurred without this rule. Therefore, the cost of these activities for small-entity cotton producers is not attributable to the proposed rule.

[3] The fumigation cost per harvester and the single movement per season requiring fumigation are APHIS estimates based on information provided by industry.

Alternatives to Minimize Any Significant Economic Impact

We do not expect the rule to have a significant impact on entities, large or small, and therefore have not set forth alternatives intended to minimize significant impacts on small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed domestic boll weevil quarantine program, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3)

USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the *Regulations.gov* Web site or in our reading room. (Instructions for accessing *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0002. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0002, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The proposed regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States and the reinfestation of areas from which the boll weevil has been eradicated. Because the boll weevil is a migratory pest, it is necessary for States to cooperate within regions to ensure the success of the eradication program.

Implementation of this regulation would require us to engage in certain information collection activities, which in turn necessitates the use of forms. Forms we plan to use to implement and enforce the program include compliance agreements, limited permits, and certificates. We described these documents in greater detail previously in this document.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Cotton growers, cotton gin operators, custom harvesters.

Estimated annual number of respondents: 1,025

Estimated annual number of responses per respondent: 1.

Estimated annual number of respondents: 1,025.

Estimated total annual burden on respondents: 1,025 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301, as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Part 301 would be amended by adding a new Subpart—Boll Weevil, §§ 301.54 through 301.54–9, to read as follows:

Subpart—Boll Weevil

Sec.

301.54 Restrictions on interstate movement of regulated articles.
301.54–1 Definitions.
301.54–2 Regulated articles.
301.54–3 Regulated areas.
301.54–4 Conditions governing the interstate movement of regulated articles from regulated areas.
301.54–5 Issuance and cancellation of certificates and limited permits.
301.54–6 Compliance agreements and cancellation.
301.54–7 Assembly and inspection of regulated articles.
301.54–8 Attachment and disposition of certificates and limited permits.
301.54–9 Costs and charges.

Subpart—Boll Weevil

§ 301.54 Restrictions on interstate movement of regulated articles.

(a) No person may move any regulated article interstate from any regulated area into or through any commercial cotton-producing area except in accordance with this subpart.[1]

(b) The following States are designated as commercial cotton-producing areas: Alabama, Arizona, Arkansas, California, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia.

§ 301.54–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection

[1] Any properly identified inspector is authorized, upon probable cause, to stop and inspect persons and means of conveyance moving in interstate commerce and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414 and 421 of the Plant Protection Act (7 U.S.C. 7714, 7731).

Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Boll weevil. The insect known as the boll weevil, *Anthonomus grandis*, in any stage of development.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of boll weevil and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Cotton. All parts of cotton and wild cotton plants of the genera *Gossypium* and *Thurberia*, except baled cotton and cotton products.

Cotton lint. All forms of raw ginned cotton except linters and gin waste.

Cotton products. Seed cotton, cotton lint, linters, oil mill waste, gin waste, gin trash, cottonseed, cottonseed hulls, and all other forms of unmanufactured cotton fiber.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.54–4(d) of this subpart.

Generally infested area. Any part of a regulated area not designated as a suppressive area.

Gin motes. Short fragments of unmanufactured cotton fiber removed from lint cleaners after ginning cotton.

Gin trash. All materials produced during the cleaning and ginning of seed cotton, bollies, or snapped cotton. It does not include the lint, cottonseed, or gin waste.

Gin waste. All forms of unmanufactured waste cotton fiber, including gin motes, resulting from the ginning of seed cotton, other than baled cotton lint.

Infestation. The presence of the boll weevil or the existence of circumstances that makes it reasonable to believe that the boll weevil may be present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.54–5(b) only to a specified destination and only in accordance with specified conditions.

Linters. Residual unmanufactured cotton fiber separated from cottonseed after the lint has been removed.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Oil mill waste. Waste product, including linters, derived from the milling of cottonseed.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine (PPQ). The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Regulated area. Any State, or any portion of a State, listed in § 301.54–3(c) or otherwise designated as a regulated area in accordance with § 301.54–3(b).

Regulated article. Any article listed in § 301.54–2(a) through (e), or otherwise designated as a regulated article in accordance with § 301.54–2(f).

Seed cotton. All forms of unginned cotton from which the seed has not been separated.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

Suppressive area. That part of a regulated area where an APHIS-endorsed area-wide control program is operating, with the objective of eradicating the boll weevil.

Used cotton equipment. Any cotton equipment previously used to harvest, strip, transport, destroy, or process cotton.

§ 301.54–2 Regulated articles.

The following are regulated articles:

(a) The boll weevil, in any living stage of development.[2]

(b) Cotton, including wild cotton and ornamental cotton, but excluding commercial bales and cottonseed;

(c) Seed cotton;

(d) Gin trash;

(e) Used cotton harvesting or processing equipment; and

(f) Any other product, article, or means of conveyance not listed in paragraphs (a) through (e) of this section that an inspector determines presents a risk of spreading the boll weevil, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.54–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a regulated area in paragraph (c) of this section each State, or each portion of a State, in which the boll weevil has been found by an inspector, in which the Administrator has reason to believe that the boll weevil is present, in which minimum pest surveillance and control activities are not maintained, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the boll weevil has been found. The Administrator may designate any part of a regulated area as a suppressive area after determining that eradication of infestation is being undertaken as an objective in that part of the regulated area; any part of a regulated area that is not designated as a suppressive area will be designated as a generally infested area. Less than an entire State will be designated as a regulated area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a regulated area will prevent the interstate spread of the boll weevil.

(b) The Administrator or an inspector may temporarily designate any nonregulated area in a State as a regulated area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonregulated area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a regulated area will be subject to this subpart. As soon as practicable, the area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

[2] Permit and other requirements for the interstate movement of boll weevils are contained in part 330 of this chapter.

(c) The following areas are designated as regulated areas and are divided into generally infested areas and suppressive areas as indicated below:

Arkansas

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lee, Lincoln, Little River, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, St. Francis, and Woodruff Counties.

Louisiana

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Adams, Attala, Benton, Bolivar, Calhoun, Carroll, Claiborne, Coahoma, De Soto, Grenada, Hinds, Holmes, Humphreys, Issaquena, Jefferson, Lafayette, Leflore, Madison, Marshall, Monroe, Montgomery, Panola, Pontotoc, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Warren, Washington, Yalobusha, and Yazoo Counties.

Mississippi

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Adams, Attala, Benton, Bolivar, Calhoun, Carroll, Claiborne, Coahoma, De Soto, Grenada, Hinds, Holmes, Humphreys, Issaquena, Jefferson, Lafayette, Leflore, Madison, Marshall, Monroe, Montgomery, Panola, Pontotoc, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Warren, Washington, Yalobusha, and Yazoo Counties.

Missouri

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Dunklin, Mississippi, New Madrid, Pemiscot, Scott, and Stoddard Counties.

New Mexico

(1) *Generally infested areas.* None

(2) *Suppressive areas.* Chaves, Eddy, and Lea Counties.

Oklahoma

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Atoka, Beckham, Cotton, Greer, Harmon, Jackson, McCurtain, Roger Mills, and Tillman Counties.

Tennessee

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Obion, Shelby, and Tipton Counties.

Texas

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Anderson, Andrews, Aransas, Archer, Atascosa, Austin, Bastrop, Baylor, Bee, Bell, Bexar, Borden, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Caldwell, Calhoun, Callahan, Cameron, Carson, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comanche, Coryell, Cottle, Crosby, Dawson, Delta, Denton, De Witt, Dickens, Dimmit, Duval, Eastland, Ellis, Falls, Fannin, Fisher, Floyd, Foard, Fort Bend, Frio, Gaines, Garza, Glasscock, Goliad, Grayson, Grimes, Guadalupe, Hale, Hall, Hardeman, Haskell, Hays, Hildalgo, Hill, Hockley, Hopkins, Houston, Howard, Hunt, Jackson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, La Salle, Lavaca, Limestone, Live Oak, Lubbock, Lynn, McLennan, Martin, Matagorda, Maverick, Medina, Midland, Milam, Mitchell, Motley, Navarro, Nolan, Nueces, Rains, Reagan, Red River, Reeves, Refugio, Robertson, Rockwall, San Patricio, Scurry, Shackelford, Starr, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Travis, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wichita, Wilbarger, Willacy, Williamson, Wilson, Yoakum, Young, Zapata, and Zavala Counties.

§ 301.54–4 Conditions governing the interstate movement of regulated articles from regulated areas.

Any regulated article may be moved interstate from a regulated area [3] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.54–5 and 301.54–8 if the regulated article is moved:

(1) From any regulated area into or through any nonregulated area that is located in a commercial cotton-producing area listed in § 301.54(b); or

(2) From any generally infested area into or through any suppressive area; or

(3) Between any noncontiguous suppressive areas; or

(4) Between contiguous suppressive areas when it is determined by the inspector that the regulated articles present a hazard of the spread of the boll weevil and the person in possession thereof has been so notified.

(b) Without a certificate or limited permit if the regulated article is moved into an area that is not listed in § 301.54(b).

(c) Without a certificate or limited permit if the regulated article originated outside the regulated area and:

(1) Is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by boll weevils (such as canvas, plastic, or other closely woven cloth) while moving through the regulated area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the regulated area; and

(3) The regulated article is moved through the regulated area without stopping except for refueling, rest stops, emergency repairs, or for traffic conditions, such as traffic lights or stop signs.

(d) Without a certificate or limited permit if:

(1) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; and

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article; and

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of the boll weevil; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

§ 301.54–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector [4] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) In accordance with part 305 of this chapter; or

(ii) Based on inspection of the premises of origin, the premises are free from the boll weevil; or

(iii) Based on inspection of the regulated article, the regulated article is free of boll weevils; and

(2) The regulated article will be moved through the regulated area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the boll weevil; and

(3) The regulated article is to be moved in compliance with any additional remedial conditions the Administrator may impose under section 414 of the Plant Protection Act

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[4] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories.

(7 U.S.C. 7714)[5] to prevent the spread of the boll weevil; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector[6] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the boll weevil because life stages of the boll weevil will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article will be moved in an enclosed vehicle or completely covered to prevent access by, and escape of, the boll weevil;

(3) The regulated article is to be moved in compliance with any additional remedial conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the boll weevil; and

(4) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after determining that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after determining that the regulated article is otherwise eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.54–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[7]

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.54–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.54–5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector[8] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.54–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

§ 301.54–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

Done in Washington, DC, this 24th day of October 2006.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E6–18150 Filed 10–30–06; 8:45 am]

BILLING CODE 3410–34–P

[5] Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved, into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

[6] See footnote 4 to § 301.54–5(a).

[7] Compliance agreement forms are available without charge from local Plant Protection and Quarantine offices, which are listed in telephone directories.

[8] See footnote 4 to § 301.54–5(a).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM357; Notice No. 25–06–11–SC]

Special Conditions: Boeing Model 737–900ER Series Airplanes; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes a special condition for the Boeing Model 737–900ER airplane. This airplane will have a novel or unusual design feature(s) when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include interaction of systems and structures. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by November 20, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM357, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM357. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Todd Martin, Aerospace Engineer, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1323; electronic mail *Todd.Martin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special condition, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this special condition. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this special condition based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 5, 2002, The Boeing Company, P.O. Box 3707, Seattle, Washington 98124, applied for an amendment to Type Certificate No. A16WE to include the new Model 737–900ER. The Model 737–900ER, which is a derivative of the Model 737–900 currently approved under A16WE, is a large transport airplane with two flight crew and the capacity to carry 215 passengers. The airplane is powered by two CFM 56–7B or CFM–567B/2 series turbofan engines.

Type Certification Basis

Under the provisions of § 21.101, Boeing must show that the Model 737–900ER meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–108, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into the Type Certificate No. A16WE after type certification approval of the 737–900ER.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to this proposed special condition. Refer to Type Certificate No. A16WE for a complete description of the certification basis for this model airplane.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 737–900ER because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–900ER must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

Model 737–900ER airplane will incorporate novel or unusual design features. This proposed special condition addresses equipment which may affect the airplane's structural performance, either directly or as a result of failure or malfunction.

This proposed special condition is identical or nearly identical to those previously required for type certification of other Boeing airplane models. The proposed special condition was derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry.

Discussion

In addition to the requirements of part 25, subparts C and D, the following special condition applies.

Interaction of Systems and Structures

The Boeing Model 737–900ER is equipped with systems that may affect the airplane's structural performance either directly or as a result of failure or malfunction. The effects of these systems on structural performance must be considered in the certification analysis. This analysis must include consideration of normal operation and of failure conditions with required

structural strength levels related to the probability of occurrence.

Applicability

As discussed above, this special condition is applicable to the Boeing Model 737–900ER. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, this special condition would apply to that model as well.

Certification of the Model 737–900ER is currently scheduled for February 2007. Because a delay would significantly affect the applicant's installation of the systems and certification of the airplane we are shortening the public comment period to 20 days.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for Boeing Model 737–900ER airplanes.

Interaction of Systems and Structures

In addition to the requirements of part 25, subparts C and D, the following proposed special condition would apply:

a. For airplanes equipped with systems that affect structural performance—either directly or as a result of a failure or malfunction—the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of part 25, subparts C and D. Paragraph b, below, must be used to evaluate the structural performance of airplanes equipped with these systems.

b. Interaction of Systems and Structures.

(1) General: The following criteria must be used for showing compliance with this special condition for interaction of systems and structures and with § 25.629 for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems.

(a) The criteria defined herein address only the direct structural consequences of the system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in this special condition.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this special condition in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this paragraph.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (e.g., speed limitations and avoidance of severe weather conditions).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, and extremely improbable) used in this special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309. However, this special condition applies only to system failure conditions that affect the structural performance of the airplane (e.g., system failure conditions that include loads, change the response of the airplane to inputs as gusts or pilot actions, or lower flutter margins).

(2) Effects of Systems on Structures.

(a) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant non-linearity (rate of displacement of control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered, when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

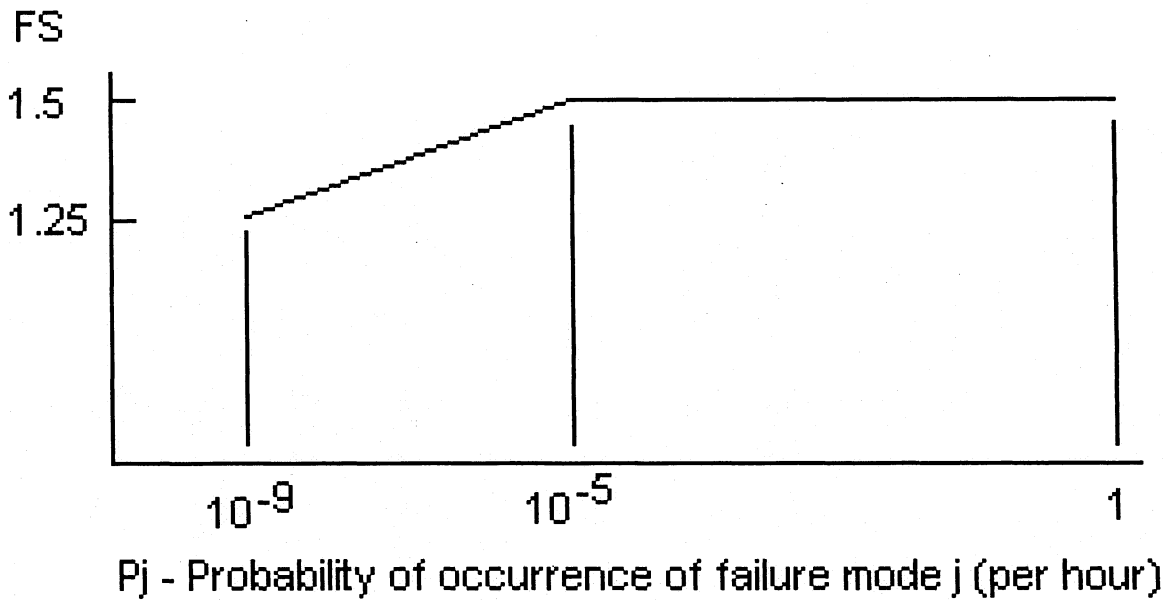
(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, those loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residential strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(1)(i) of this section. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_c/M_c, freedom from aeroelastic instability must be shown to those increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(vi) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_c/M_c or the speed limitation prescribed for the remainder of the flight must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and in 25.345.

(C) The limit rolling conditions specified in § 25.349 and limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

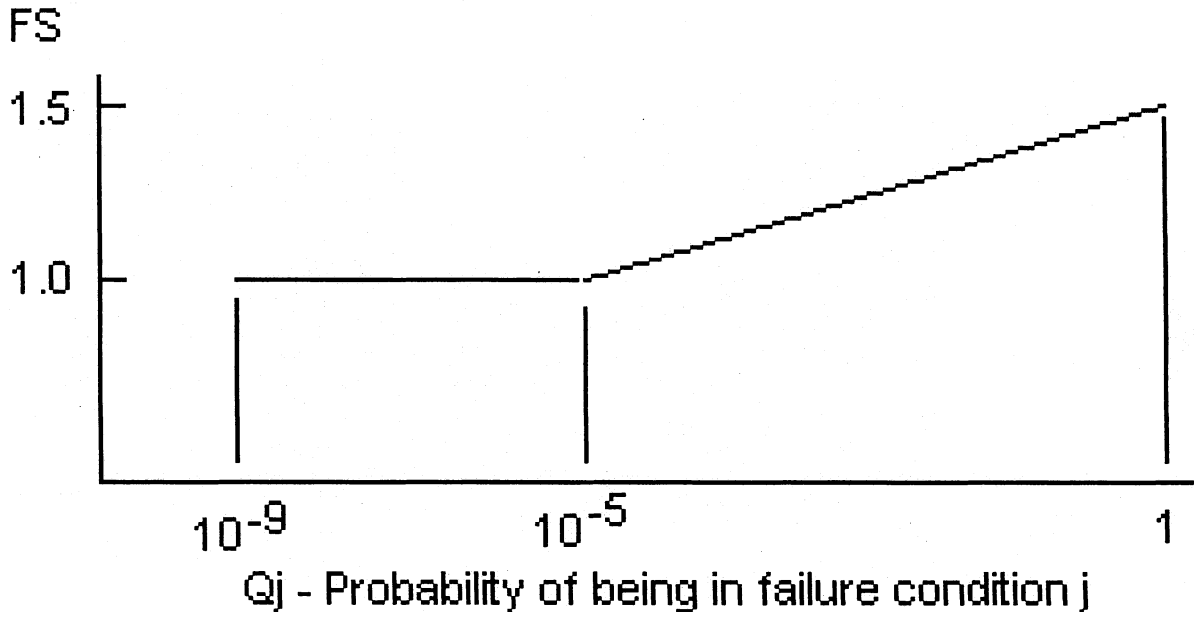
(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (c)(2)(i) of this special condition multiplied by a factor of safety, depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

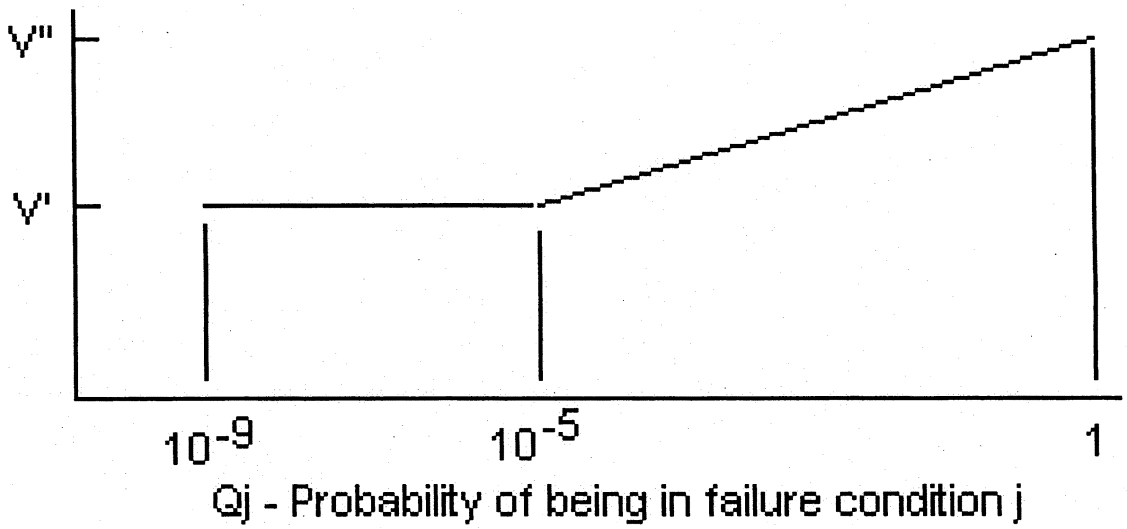
(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(2)(ii). For pressurized cabins, these loads must be defined combined with the normal operating differential pressure.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight, using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′= Clearance speed as defined by § 25.629(b)(2).
V″= Clearance speed as defined by § 25.629(b)(1).
Q_j= (T_j)(P_j) where:
T_j= Average time spent in failure condition j (in hours)
P_j= Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of this Part, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbably, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components the failures of which are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C, below 1.25 or flutter margins below V″ must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this Special Condition must be met, including the provisions of paragraph (b), for the dispatched condition and paragraph (c) for subsequent failures. Expected operational limitations may be taken into account in establishing $P)_j$ as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed, if the subsequent system failure rate is greater than 1E–3 per flight hour.

Issued in Renton, Washington, on October 19, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8974 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM358; Notice No. 25–06–12–SC]

Special Conditions: Gulfstream Aerospace Corporation, Model GV, GV–SP, and GIV–X Airplanes; Windshield Coating in Lieu of Wipers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This action proposes a special condition for the Gulfstream Aerospace Corporation Model GV, GV–SP, and GIV–X airplanes. These airplanes will have a novel or unusual design feature(s) associated with use of a hydrophobic windshield coating, rather than windshield wipers, as the means to maintain a clear portion of the windshield during precipitation conditions, as required by the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This proposed special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by November 20, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM358, 1601 Lind Avenue SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM358. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John McConnell, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–1365; facsimile (425) 227–1320, e-mail *john.mcconnell@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special condition, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this special condition. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this special condition based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 19, 2005, Gulfstream Aerospace Corporation applied for a change to Type Certificate No. A12EA to use a hydrophobic windshield coating as the sole means of providing adequate pilot compartment view in the presence of precipitation for Gulfstream Model GV, GV–SP and GIV–X airplanes. The Gulfstream Model GV, GV–SP and GIV–X airplanes are currently approved under Type Certificate No. A12EA. The Model GV airplane is powered by two BMW–Rolls Royce Deutschland BR700–710A1–10 engines, operates with a two person flightcrew, and has the capacity to carry 19 passengers. The Model GV–SP airplane is powered by two BMW-Rolls Royce Deutschland BR700–710C4–11 engines, operates with a two person flightcrew, and has the capacity to carry 19 passengers. The Model GIV–X airplane is powered by two Rolls Royce Tay Mark 611–8C engines, operates with a two person flightcrew, and has the capacity to carry 19 passengers.

Type Certification Basis

Under the provisions of § 21.101, Gulfstream Aerospace Corporation must show that the Model GV, GV–SP and GIV–X airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A12EA include:

- For Model GV airplanes—part 25, effective February 1, 1965, Amendment 25–1 through Amendment 25–81, with exceptions.
- For Model GV–SP airplanes—part 25, effective February 1, 1965, Amendment 25–1 through Amendment 25–98.
- For Model GIV–X airplanes—part 25, effective February 1, 1965, Amendment 25–1 through Amendment 25–101, with exceptions.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to this proposed special condition.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model GV, GV–SP and GIV–X airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model GV, GV–SP and GIV–X airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Gulfstream Model G–V, GV–SP and GIV–X flightdeck designs

incorporate a hydrophobic windshield coating to provide adequate pilot compartment view in the presence of precipitation. Sole reliance on such a coating, without windshield wipers or a windshield blower, constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Discussion

Section 25.773(b)(1) requires that both pilots of a transport category airplane be provided a means to maintain a sufficiently clear portion of the windshield during precipitation conditions, and that this clear portion of the windshield must have a sufficiently extensive view along the flight path. The regulations require this means to maintain such an area during precipitation in heavy rain at speeds up to 1.5 V_{SR1}.

This requirement has existed in principle since 1953 in Part 4b of the Civil Air Regulations (CAR). Section 4b.351(b)(1) of CAR 4b required that ''Means shall be provided for maintaining a sufficient portion of the windshield clear so that both pilots are afforded a sufficiently extensive view along the flight path in all normal flight attitudes of the airplane. Such means shall be designed to function under the following conditions without continuous attention on the part of the crew: (i) In heavy rain at speeds up to 1.6 V_{S1}, flaps retracted.'' Effective December 26, 1990, Amendment 25–108 changed the criterion for effectiveness of the means to maintain an area of clear vision from 1.6 V_{S1} to 1.5 V_{SR1} to accommodate the redefinition of the reference stall speed as the 1-g stall speed. As noted in the preamble to the final rule for that amendment, the 7 percent decrease in the speed value offsets a corresponding increase in the reference stall speed associated with the use of V_{SR1} rather than V_{S1}.

The requirement that the means to maintain a clear area of forward vision must function at high speeds and high precipitation rates is based on the use of windshield wipers as the means to maintain an adequate area of clear vision in precipitation conditions. The requirement in 14 CFR 121.313(b), and in 14 CFR 125.213(b), to provide ''a windshield wiper or equivalent for each pilot station'' has remained unchanged since at least 1953.

The effectiveness of windshield wipers to maintain an area of clear vision normally degrades as airflow and precipitation rates increase. It is assumed that because high speeds and high precipitation rates represent limiting conditions for windshield wipers, they will also be effective at lower speeds and precipitation levels. Accordingly, § 25.773(b)(1)(i) does not require maintenance of a clear area of forward vision at lower speeds or lower precipitation rates.

A forced air stream blown over the windshield has also been used to maintain an area of clear vision in precipitation. The limiting conditions for this technology are comparable to those for windshield wipers. Accordingly, introduction of this technology did not present a need for special conditions to maintain the level of safety embodied in the existing regulations.

Hydrophobic windshield coatings may depend to some degree on airflow to maintain a clear vision area. The heavy rain and high-speed conditions specified in the current rule do not necessarily represent the limiting conditions for this new technology. For example, airflow over the windshield, which may be necessary to remove moisture from the windshield, may not be adequate to maintain a sufficiently clear area of the windshield in low speed flight or during surface operations. Alternatively, airflow over the windshield may be disturbed during such critical times as the approach to land, where the airplane is at a higher than normal pitch attitude. In these cases, areas of airflow disturbance or separation on the windshield could cause failure to maintain a clear vision area on the windshield.

In addition to potentially depending on airflow to function effectively, hydrophobic coatings may also be dependent on water droplet size for effective precipitation removal. For example, precipitation in the form of a light mist may not be sufficient for the coating's properties to result in maintaining a clear area of vision.

In summary, the current regulations identify speed and precipitation rate requirements that represent limiting conditions for windshield wipers and blowers, but not for hydrophobic coatings, so it is necessary to issue special conditions to maintain the level of safety represented by the current regulations.

These special conditions provide an appropriate safety standard for the hydrophobic coating technology as the sole means to maintain a clear area of vision by requiring it to be effective at low speeds and precipitation rates as well as the higher speeds and precipitation rates identified in the current regulation. These are the only new or changed requirements relative to those in § 25.773(b)(1) at Amendment 25–108.

Applicability

As discussed above, this special condition is applicable to Gulfstream Model GV, GV–SP and GIV–X airplanes. Should Gulfstream Aerospace Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well.

The substance of this special condition has been subject to the notice and public comment procedure in several prior instances. Therefore, because a delay would significantly affect scheduled airplane deliveries, we are shortening the public comment period to 20 days.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model GV, GV–SP, and GIV–X airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for Gulfstream Aerospace Corporation Model GV, GV–SP, and GIV–X airplanes.

Pilot Compartment View—Hydrophobic Coatings in Lieu of Windshield Wipers

The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the ground or flight path in normal taxi and flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the crew, in conditions from light misting precipitation to heavy rain at speeds from fully stopped in still air, to 1.5 V_{SR1} with lift and drag devices retracted.

Issued in Renton, Washington, on October 23, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18288 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25947; Airspace Docket No. 06–AAL–31]

Proposed Revision of Class D/E Airspace; Big Delta, Allen Army Airfield, Fort Greely, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the controlled airspace at Allen Army Airfield (AAF), AK. The current Class D airspace is continuous. The United States Army has decided to staff the Allen AAF air traffic control tower (ATCT) part time. The Class D and E airspace will need to be revised in order to align Class D airspace effective times to match ATCT hours of operation. The current title of the airspace described in FAA Order 7400.9P will also change to reflect current guidance in FAA Order 7400.2E. Adoption of this proposal would result in reconfiguring the controlled airspace at Allen AAF, Delta Junction, AK.

DATES: Comments must be received on or before December 15, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25947/ Airspace Docket No. 06–AAL–31, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–25947/Airspace Docket No. 06–AAL–31.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class D and E airspace descriptions at Allen AAF, AK resulting from a change in the hours of activation at the Allen AAF Control Tower. The intended effect of this proposal is to adjust the Class D airspace activation time to align with the Allen AAF tower hours of operation. The class D airspace would only be in place while the tower is manned. The Class D airspace area will be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/ Facility Directory.

The Army does not need to operate the control tower 24 hours per day. Class D airspace is only in effect when a tower is open. When the tower is not open, the airspace would revert to Class E. Additionally, the title of each airspace description in FAA Order 7400.9P associated with Allen AAF would be changed. By convention, these titles are associated with the nearest city or town. In this case, ''Delta Junction'' should be referenced (not ''Big Delta''). For example, the Class E5 airspace should be titled: ''AAL AK E5 Delta Junction, AK''. There is a smaller town named Big Delta about 10 miles further north of Delta Junction. It has been mistakenly listed in the description since 1995. This action would correct that error. The proposed airspace changes are sufficient in size to contain aircraft executing instrument procedures at Allen AAF, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D

and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes changes to Class D and E airspace that remain sufficient in size to contain aircraft executing instrument procedures at Allen AAF and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS D AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

Paragraph 5000 General.

* * * * *

AAL AK D Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59″40′ N., long. 145°43″18′ W.)
Big Delta VORTAC
(Lat. 64°00″16′ N., long. 145°43″02′ W.)
Delta Junction Airport (D66), AK
(Lat. 64°03″02′ N., long. 145°43″02′ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 6.3-mile radius from Allen AAF; excluding the portion within the boundary of restricted areas R2202A and R2202C, and excluding that airspace below 700 feet above the surface contained within an area from an East/West line 1/2-mile south of the Delta Junction Airport (D66), extending from 1 mile east of the Richardson Highway to 1 mile west of the Delta River, thence northwest and parallel to the Richardson Highway and the Delta River, to the 6.3-mile radius from Allen AAF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6000 General.

* * * * *

AAL AK E2 Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59″40′ N., long. 145°43″18′ W.)

Within an area from an East/West line ½-mile south of the Delta Junction Airport (D66), extending from 1 mile east of the Richardson Highway to 1 mile west of the Delta River, thence northwest and parallel to the Richardson Highway and the Delta River, to the 6.3-mile radius from Allen AAF. This Class E2 airspace area is effective only when Class D airspace is activated.

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AAL AK E4 Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59″40′ N., long. 145°43″18′ W.)
Big Delta VORTAC
(Lat. 64°00″16′ N., long. 145°43″02′ W.)

The airspace extending upward from the surface within 3 miles north and 2.6 miles south of the 039° radial of the Big Delta VORTAC extending from the 6.3-mile radius from Allen AAF to 10.3 miles northeast of Allen AAF.

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

* * * * *

AAL AK E5 Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59″40′ N., long. 145°43″18′ W.)
Big Delta VORTAC
(Lat. 64°00″16′ N., long. 145°43″02′ W.)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Allen AAF, and within 3 miles north and 2.6 miles south of the 039° radial of the Big Delta VORTAC extending from the 8.6-mile radius from Allen AAF, to 10.3 miles northeast of Allen AAF; excluding the portion within restricted areas 2202A and R2202C.

* * * * *

Issued in Anchorage, AK, on October 23, 2006.

Anthony M. Wylie,

Director, Alaska Flight Service Information Office.

[FR Doc. E6–18264 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 201, 207, 314, 330, 514, 515, 601, 607, 610, and 1271

[Docket No. 2005N–0403]

RIN 0910–AA49

Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs; Public Meeting; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of public meeting and extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the proposed changes to the National Drug Code (NDC) system contained in the agency's proposed rule governing drug establishment registration and drug listing. The proposed rule appeared in the **Federal Register** of August 29, 2006 (71 FR 51276). In addition, in response to requests for an extension, FDA is extending to January 26, 2007, the comment period for the proposed rule to

provide interested parties additional time to submit comments.

DATES: The public meeting will be held on December 11, 2006, from 9 a.m. to 4 p.m. Register to attend the meeting by November 24, 2006. Submit written or electronic comments for consideration at the meeting and requests to speak by November 24, 2006. Submit written or electronic comments on the proposed rule and this notice by January 26, 2007.

ADDRESSES: The public meeting will be held at FDA, Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

You may submit comments, identified by Docket No. 2005N–0403 and RIN number 0910–AA49, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lakshmi Cherukuri, Center for Drug Evaluation and Research (HFD–330), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8924, E-mail: *Lakshmi.Cherukuri@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 29, 2006 (71 FR 51276), FDA published a proposed rule entitled ''Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs that are Regulated Under a Biologics License Application, and Animal Drugs'' (proposed rule). The proposed revisions would reorganize, consolidate, clarify, and modify current regulations concerning who must register establishments and list human drugs, human drugs that are also biological products (including vaccines and allergenic products), and/or human cells, tissues, and cellular and tissue-based products, and animal drugs.

The proposed rule would make certain changes to the NDC system and add a requirement that the appropriate NDC number appear on the labels of all drugs subject to the listing requirements. The NDC number is a widely used identifier for drugs. It is a unique 10–digit number consisting of 3 segments: The labeler code, the product code, and the package code. NDC numbers are an important, standardized identification system for drug products used in data or claims processing and for a variety of other purposes where identification of drug products is essential. For more information regarding the NDC number, how it originated, and how it is used, see the preamble of the proposed rule (71 FR 51276 at 51295 to 51296). In the proposed rule, FDA is not proposing to change the format of the NDC number (although comments are welcome on this topic), but is proposing to change the processes for assigning and displaying the NDC number. FDA's proposed changes to the NDC number are described in detail in section IV.C of the preamble of the proposed rule (71 FR 51276 at 51295 through 51306).

II. The Public Meeting

A. Request for a Public Meeting on NDC-Related Issues

In a letter dated October 20, 2005, the Healthcare Distribution Management Association (HDMA), a trade association representing drug distributors, requested that before publishing the proposed rule, FDA hold a public meeting on issues related to changes to the NDC system. FDA responded by letter dated December 14, 2005, that we planned to hold a public meeting on NDC changes during the comment period following publication of the proposed rule. We stated that doing so after the proposal was published would give interested parties the benefit of reviewing the agency's proposal prior to the meeting, which would facilitate more focused comments during the meeting on issues raised in the proposed rule.

B. Scope of the Public Meeting

As requested, we are holding a public meeting to discuss changes to the NDC system contained in the proposed rule. We emphasize that discussion at this public meeting will be limited to NDC-related issues and will not include any other registration or listing issues. Persons wishing to comment on other aspects of the proposed rule should do so by submitting their comments, in writing, as directed in the proposal.

We anticipate that discussions will include presentations from FDA personnel, invited speakers, and members of the public. We invite discussion of NDC-related topics raised in the proposed rule, including the following:

1. The proposed requirement that human-readable NDC numbers appear on the labels of drugs subject to the drug listing requirements (see 71 FR 51276 at 51297).

2. The proposed requirement that the ''appropriate NDC number'' that must appear on the labels of drugs is the NDC number of the last manufacturer, repacker or relabeler (including a drug product salvager who repacks or relabels the drug), or private label distributor responsible for the drug immediately before it is received by the wholesaler or retailer (see 71 FR 51276 at 51297 to 51298).

3. The proposed requirement that the human-readable NDC number be immediately preceded by the prefix ''NDC'' (see 71 FR 51276 at 51298).

4. The proposal to designate the responsibility of assigning the NDC number to FDA (see 71 FR 51276 at 51299).

5. The proposed prohibitions against using an NDC number to represent a different drug than the drug to which the NDC number was assigned, and against using a different NDC number if marketing is resumed for a drug that was discontinued earlier (see 71 FR 51276 at 51305).

6. The proposal to exempt from public disclosure the NDC number assigned to the drug immediately before the drug is received by the repacker or relabeler. The reason for the proposed exemption is that this information may disclose a business relationship between the manufacturer, repacker, relabeler, or drug product salvager and the business from which they obtained the drug, and may constitute commercial or financial information that is exempt from public disclosure (see 71 FR 51276 at 51320).

7. The possibility of adding one or more digits to the NDC code in the future (see 71 FR 51276 at 51300).

C. Registration, Agenda, and Transcript

There is no fee to register for the meeting, but registration is required and space is limited. Interested parties are therefore encouraged to register early. Limited visitor parking is available for a fee, and the Twinbrook Metro Stop is within walking distance of the meeting site. Early arrival is encouraged, as there will be security screening. You will be asked for government-issued picture identification by the security officers. If you need special accommodations due to a disability, please include this information when registering.

Registration for General Attendees. Registration is required to attend the public meeting. If you wish to attend the meeting, you must register by November 24, 2006, via e-mail to: *CDER_330CATS@cder.fda.gov*. Please indicate ''National Drug Code (NDC) system'' in the SUBJECT line and provide complete contact information for each attendee (including name, title, affiliation, e-mail address, and phone number(s)). Upon receipt and review for adequacy of information, an e-mail will be sent to confirm registration.

Registration for Speaking Attendees. If you wish to speak at the meeting, you must register by November 24, 2006, via e-mail to: *CDER_330CATS@cder.fda.gov*. Please indicate ''Speaker-National Drug Code (NDC) system'' in the SUBJECT line. When registering, speakers must provide the following information: (1) The NDC-related topic or issue to be addressed; (2) the speaker's name, title, company or organization, address, phone number, and e-mail address; and (3) the approximate length of time requested to speak. We encourage consolidation of like minded presentations to enable a broad range of views to be presented.

Agenda and Transcript. The agenda for the public meeting will be available on FDA's Center for Drug Evaluation and Research (CDER) Web site at: *www.fda.gov/cder/ndc/database/default.htm*. After the meeting, the agenda, presentations, and transcript will be placed on file in the Division of Dockets Management under Docket No. 2005N–0403 and on CDER's Web site identified previously.

Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 20 working days after the meeting at a cost of 10 cents per page, or on compact disc at a cost of $14.25 each. You may also examine the transcript at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*.

III. Extension of the Comment Period for the Proposed Rule

By letter dated September 25, 2006, the Compressed Gas Association and the Gases and Welding Distributors Association requested an extension of 60 days to comment on the proposed rule because their member companies do not have sufficient time to evaluate the economic impact of the proposal and report their findings to FDA. By letter dated September 26, 2006, the Animal Health Institute (AHI) also requested a 60–day extension of the comment period to provide AHI additional time to review the proposed rule, analyze the impact on its industry, and provide comments to FDA. In addition, by letter dated October 12, 2006, the Consumer Healthcare Products Association (CHPA) requested a 60–day extension of the comment period to provide CHPA additional time to obtain and review opinions and responses from its member companies.

FDA has considered these extension requests and is extending the comment period to January 26, 2007. We believe that extending the comment period is reasonable in light of the complexity and scope of the issues in the proposed rule and that it will not significantly delay resolution of this rulemaking.

IV. Request for Comments

We are interested in obtaining public comment on the NDC-related issues identified in this document. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this document and the proposed rule (see **DATES**). Submit two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with Docket No. 2005N–0403. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18310 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 2006N-0362]

General and Plastic Surgery Devices; Reclassification of the Absorbable Hemostatic Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the absorbable hemostatic device intended to produce hemostasis from class III (premarket approval) into class II (special controls). FDA is proposing this reclassification in accordance with the Federal Food, Drug, and Cosmetic Act (the act). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document that would serve as the special control if FDA reclassifies this device.

DATES: Submit written comments by January 29, 2007. See section X of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. 2006N–0362, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

The 1976 amendments broadened the definition of ''device'' in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices, i.e., those devices previously regulated as new drugs, including the absorbable hemostatic device, into class III. SMDA amended section 520(l) of the act (21 U.S.C. 360j(l)) to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices still remaining in class III to determine whether the devices should be reclassified into class II (special controls) or class I (general controls). The legislative history of the SMDA reflects congressional concern that many transitional devices were being overregulated in class III (H. Rept. 808, 101st Cong., 2d sess. 26–27 (1990); S. Rept. 513, 101st Cong., 2d sess. 27 (1990)).

Accordingly, in the **Federal Register** of November 14, 1991 (56 FR 57960), FDA issued an order under section 520(l)(5)(A) of the act, requiring manufacturers of transitional devices, including the absorbable hemostatic device (21 CFR 878.4490), to submit to FDA a summary of and a citation to any information known or otherwise available to them respecting the devices, including adverse safety or effectiveness information, which had not been submitted under section 519 of the act (21 U.S.C. 360i).

Manufacturers were to submit the summaries and citations to FDA by January 13, 1992. However, because of misunderstandings and uncertainties regarding the information required by the order, and whether the order applied to certain manufacturers' devices, many transitional class III device manufacturers failed to comply with the reporting requirement by January 13, 1992. Consequently, in the **Federal Register** of March 10, 1992 (57 FR 8462), FDA extended the reporting period to March 31, 1992.

Section 520(l)(5)(B) of the act provides that, after the issuance of an order requiring manufacturers to submit any information known or otherwise available respecting the devices, but before December 1, 1992, FDA was to publish regulations either leaving transitional class III devices in class III or reclassifying them into class I or II. Subsequently, as permitted by section 520(l)(5)(C) of the act, in the **Federal Register** of November 30, 1992 (57 FR 56586), the agency published a notice extending the period for issuing such regulations until December 1, 1993. Due to limited resources, FDA was unable to publish the regulations before the December 1, 1993, deadline.

II. Regulatory Background of the Device

In the **Federal Register** of December 16, 1977 (42 FR 63472), FDA identified the absorbable hemostatic agent and dressing as a transitional device that is a class III device that FDA previously regulated as a drug and for which premarket approval was immediately required. Since enactment of the 1976 amendments, FDA has approved numerous premarket approval (PMA) applications and PMA supplements authorizing the commercial distribution of new absorbable hemostatic agents and dressings in the United States.

Absorbable hemostatic products that include biological products or drug components are combination products as defined in 21 CFR 3.2(e). When the device component is responsible for the primary mode of action of the absorbable hemostatic product, it is assigned to CDRH for premarket review and regulation. If the absorbable hemostatic device is reclassified, these combination products will be subject to premarket notification [510(k)] requirements.

III. Description of the Device

The current identification of the device states that an ''absorbable hemostatic agent or dressing is a device intended to produce hemostasis by accelerating the clotting process of blood. It is absorbable.'' Absorbable hemostatic devices are primarily applied during surgical procedures in order to control bleeding that is not readily controlled via conventional means, such as cautery or ligation. At other times, an absorbable hemostatic device may be applied due to the inaccessibility of a site to conventional hemostatic methods.

FDA is proposing the following device name and identification based on the agency's review to more accurately identify the device: An absorbable hemostatic device is an absorbable device that is placed in the body during surgery to produce hemostasis by accelerating the clotting process of blood.

IV. Recommendation of the Panel

At a July 8, 2002, public meeting of FDA's General and Plastic Surgery Devices Panel (the Panel), the Panel requested that the agency provide information on the potential content of a class II special controls guidance document for the absorbable hemostatic device. The Panel requested this information to enable them to make an appropriate recommendation on possible reclassification of the device (Ref. 1).

At a July 24, 2003, public meeting of the Panel, the agency presented the possible content of a class II special controls guidance for the absorbable hemostatic device (Ref. 2). The Panel unanimously recommended that the absorbable hemostatic device be reclassified from class III into class II and recommended that a class II guidance document be the special control for the device. The Panel based the recommendations on the information provided by FDA, the presentations to the panel by manufacturers and FDA, the Panel's deliberations at the meeting, and their personal experience with the device.

V. Risks to Health

After considering the information in the panel's recommendation, as well as the published literature and Medical Device Reports, FDA has evaluated the risks to health associated with use of the absorbable hemostatic device and determined that the following risks to health are associated with its use.

A. Uncontrolled Bleeding

The absorbable hemostatic device is intended for use during surgical procedures as an adjunct to hemostasis when conventional means fail to produce hemostasis or are impractical. Patients receiving antiplatelet/anticoagulation therapy have increased blood clotting times. This increase in blood clotting time occurs even when an absorbable hemostatic device is used during the surgical procedure to control bleeding. Failure to completely control bleeding can lead to death or severe injury.

B. Hematoma

If small amounts of bleeding persist following the application of an absorbable hemostatic device, the accumulation of blood behind the device will form a hematoma. The hematoma may press on soft tissue and cause soft tissue or nerve damage. A hematoma may also result in infection (see section V.C of this document).

C. Infection

An absorbable hemostatic device may serve as a nidus for infection and abscess formation. Absorbable hemostatic devices are manufactured from collagen, gelatin, or oxidized regenerated cellulose; some collagen and gelatin hemostatic devices may contain FDA-licensed bovine thrombin. Bacteria can grow on these device materials. For example, the use of absorbable hemostatic devices in nasal surgery has caused toxic shock syndrome.

D. Wound Dehiscence

The use of an absorbable hemostatic device near sites of skin incision closures has interfered with the healing of the incision. This interference is due to mechanical interposition of the device and is not due to intrinsic interference with the wound healing process.

E. Foreign Body Reactions

The absorbable hemostatic device has been associated with foreign body reactions involving fluid accumulation due to encapsulation of the device. Such encapsulated devices have resulted in granuloma formation, inflammation, and edema, which may require surgical removal.

F. Immunologic Reactions

Absorbable hemostatic devices are composed of animal or plant derived proteins and/or polysaccharides. These devices are made of bovine collagen, porcine and bovine gelatin, and regenerated oxidized cellulose; some may also include FDA-licensed bovine thrombin as a combination product component. Some patients are allergic to these animal or plant-derived materials. Patients allergic to bovine thrombin containing hemostatic devices may form antibodies to bovine Factor V_a that may cross react with human Factor V_a resulting in a potentially fatal coagulopathy.

G. Adhesion Formation

An absorbable hemostatic device, in the presence of coagulated blood and tissue fluid, often leads to scarring and adhesion formation in the weeks and months following the surgical procedure. The surgical procedure itself may result in scarring and adhesion formation.

H. Failure to be Absorbed

Absorbable hemostatic devices are readily degraded by enzymatic and hydrolytic action. Occasionally, an absorbable hemostatic device may lodge in an area with low enzymatic and hydrolytic activity. In such instances, it may not be efficiently absorbed. Subsequently, it may become encapsulated and exert pressure on soft tissue requiring surgical removal.

I. Interference With Methylmethacrylate Adhesives

Some types of absorbable hemostatic devices have been reported to reduce the strength of methylmethacrylate adhesives used to fixate orthopedic prosthetic devices to bone.

J. Aspiration Into Blood Salvage System Filters

Fragments of an absorbable hemostatic device may pass through blood salvage system filters and occlude the systems or the patient's vasculature.

K. Embolization

Absorbable hemostatic devices used near moderate to large blood vessels may result in embolization of the blood vessel. Such embolization has been associated with severe adverse effects, including fever, duodenal and pancreatic infarct, embolization of lower extremity vessels, pulmonary embolization, splenic abscess, necrosis, asterixis, and death.

L. Paralysis/Nerve Damage/Tissue Necrosis

Absorbable hemostatic devices absorb liquid and swell to varying degrees, up to 35 to 40 times their weight in liquid. This absorption of liquid is accompanied by a concomitant swelling of the device.

VI. Summary of the Reasons for the Reclassification

FDA believes that the absorbable hemostatic device should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device and because there is sufficient information to establish special controls to provide such assurance.

In addition to the potential risks to health associated with use of the absorbable hemostatic device described in section V of this document, there is reasonable knowledge of the benefits of the device. Specifically, the absorbable hemostatic device may prevent extended bleeding, reduce surgical morbidity due to blood loss, and reduce the need for transfusions.

VII. Special Controls

In addition to general controls, FDA believes that the draft guidance document entitled ''Class II Special Controls Guidance: Absorbable Hemostatic Device'' (the class II special controls guidance document) is an adequate special control to address the risks to health associated with the use of the device described in section V of this document. FDA believes that the class II special controls guidance document, which incorporates voluntary consensus standards and describes labeling recommendations, addresses the Panel's concerns. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft class II special

controls guidance document that the agency would use as the special control for this device.

The draft class II special controls guidance document sets forth the information FDA believes should be included in premarket notification submissions (510(k)s) for the absorbable hemostatic device. FDA has identified the risks to health associated with the use of the device in the first column of table 1 of this document and the recommended mitigation measures identified in the class II special controls guidance document in the second column of table 1. FDA believes that addressing these risks to health in a 510(k) in the manner identified in the class II special controls guidance document, or in an acceptable alternative manner, is necessary to provide reasonable assurance of the safety and effectiveness of the device.

TABLE 1.

Identified Risk	Recommended Mitigation Measures
Uncontrolled Bleeding	Material and performance characteristics, Animal testing, Clinical testing, Labeling
Hematoma	Animal testing, Clinical testing, Labeling
Infection	Animal testing, Sterility, Labeling
Wound Dehiscence	Labeling
Foreign Body Reactions	Animal testing, Biocompatibility, and Labeling
Immunological Reactions	Animal testing, Biocompatibility, Labeling
Adhesion Formation	Animal testing, Clinical testing
Failure to be Absorbed	Material and performance characteristics, Animal testing, Biocompatibility
Interference with Methylmethacrylate Adhesives	Animal testing, Labeling
Aspiration Into Blood Salvage System Filters	Labeling
Embolization	Labeling
Paralysis/Nerve Damage/Tissue Necrosis	Labeling

VIII. FDA's Findings

As discussed previously in this document, FDA believes the absorbable hemostatic device should be reclassified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device and because there is sufficient information to establish special controls to provide such assurance. FDA, therefore, is proposing to reclassify the device into class II and establish the draft class II special controls guidance document as a special control for the device.

Section 510(m) of the act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the act, if the agency determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA believes that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, does not intend to exempt the device from the premarket notification requirements.

IX. Effective Date

FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

X. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–602), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $118 million, using the most current (2004) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

XII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

XIII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also tentatively concludes that the draft special control guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the draft guidance document entitled ''Class II Special Controls Guidance Document:

Absorbable Hemostatic Device''; the notice contains an analysis of the paperwork burden for the draft guidance.

XIV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic 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.

XV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. General and Plastic Surgery Devices Panel, Transcript, pp. 80–177, July 8, 2002.

2. General and Plastic Surgery Devices Panel, Transcript, July 24, 2003.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 878 be amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR Part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 878.4490 is revised to read as follows:

§ 878.4490 Absorbable hemostatic device.

(a) *Identification*. An absorbable hemostatic device is an absorbable device that is placed in the body during surgery to produce hemostasis by accelerating the clotting process of blood.

(b) *Classification*. Class II (special controls). The special control for the device is FDA's ''Class II Special Controls Guidance Document: Absorbable Hemostatic Device.'' See § 878.1(e) for the availability of this guidance document.

Dated: October 19, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–18324 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124152–06]

RIN 1545–BF73

Definition of Taxpayer for Purposes of Section 901 and Related Matters; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing; Correction.

SUMMARY: This document contains corrections to notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Friday, August 4, 2006 (71 FR 44240) relating to the determination of who is considered to pay a foreign tax for purposes of sections 901 and 903.

FOR FURTHER INFORMATION CONTACT: Bethany A. Ingwalson, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG–124152–06) that is the subject of these corrections are under sections 901 and 903 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–124152–06) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–124152–06) that was the subject of FR Doc. E6–12358 is corrected as follows:

§ 1.901–2 [Corrected]

1. On page 44246, column 1, § 1.901–2(f)(6), paragraph (i) of *Example 4.*, line 4, the language ''county Y. A accrues interest income on the'' is corrected to read ''country Y. A accrues interest income on the''.

2. On page 44246, column 2, § 1.901–2(f)(6), paragraph (i) of *Example 4.*, first paragraph of the column, line 1, the language ''pay over to country X 10 percent of the'' is corrected to read ''pay over to country Y 10 percent of the''.

3. On page 44247, column 1, § 1.901–2(f)(6), paragraph (i) of *Example 8.*, the language ''tax purposes. New D also has a short U.S.'' is corrected to read ''tax purposes. ''New'' D also has a short U.S.''.

4. On page 44247, column 1, § 1.901–2(f)(6), paragraph (ii) of *Example 8.*, line 11, the language ''years of terminating D and new D. See'' is corrected to read ''years of old D and new D. See''.

5. On page 44247, column 1, § 1.901–2(f)(6), paragraph (ii) of *Example 8.*, line 13, the language ''allocation of terminating D's country M taxes'' is corrected to read ''allocation of old D's country M taxes''.

6. On page 44247, column 1, § 1.901–2(h), the language ''(h) *Effective Date*. Paragraphs (a)'' is corrected to read ''(h) *Effective date*. Paragraphs (a)''.

LaNita Van Dyke,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–18205 Filed 10–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM17

Notice and Assistance Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulation governing VA's duty to provide a claimant with notice of the information and evidence necessary to substantiate a claim and VA's duty to assist a claimant in obtaining the evidence necessary to substantiate the claim. The purpose of these proposed changes is to clarify when VA has no duty to notify a claimant of how to substantiate a claim for benefits, to make the regulation comply with statutory changes, and to streamline the development of claims.

DATES: Comments must be received by VA on or before January 2, 2007.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by: mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave.,

NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AM17—Notice and Assistance Requirements.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Compensation and Pension Service, Policy and Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: Section 3(a) of the Veterans Claims Assistance Act of 2000 (VCAA), Public Law 106–475, 114 Stat. 2096, amended 38 U.S.C. 5103 to impose on VA a duty to provide certain notice to certain claimants applying for veterans' benefits. *See* 38 U.S.C. 5103(a). Under section 5103(a), upon receipt of a substantially complete application for benefits, VA must ''notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim'' (section 5103(a) notice). 38 U.S.C. 5103(a). VA implemented section 5103(a) in 38 CFR 3.159, which reflects section 5103(a)'s requirement that VA give the notice upon receipt of a substantially complete application. *See* 38 CFR 3.159(b)(1). In addition, VA defined ''substantially complete application'' for purposes of section 5103(a) notice. *See* 38 CFR 3.159(a)(3). The purpose of this rulemaking is, in part, to clarify when VA has no duty to give section 5103(a) notice.

Long before enactment of the VCAA, VA had defined ''application'' in 38 CFR 3.1(p). An ''application'' is ''a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit.'' 38 CFR 3.1(p). Because that definition pre-dated the VCAA, it is apparent that it was not issued in implementation of the VCAA. However, experience implementing section 5103(a) has disclosed a potential ambiguity in the regulations, which this rulemaking will clarify. That ambiguity is whether VA's receipt of a notice of disagreement (NOD) also triggers VA's duty to give section 5103(a) notice because the NOD can be viewed as satisfying the § 3.1(p) definition of ''application.'' We propose to clarify that it does not.

An NOD is the means by which a claimant initiates an appeal of a decision on a claim to the Board of Veterans' Appeals (Board). 38 U.S.C. 7105(a); 38 CFR 20.200. ''A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute [an NOD].'' 38 CFR 20.201.

The ambiguity we propose to clarify is whether VA's receipt of an NOD triggers VA's duty to issue section 5103(a) notice. It appears from these regulatory definitions that a single written communication expressing disagreement with a decision of the agency of original jurisdiction could be viewed as constituting both an NOD under § 20.201 and an application under § 3.1(p). (If a single written communication contains language expressing disagreement with a decision of the agency of original jurisdiction as well as language raising a new claim for benefits, section 5103(a) notice would be required in response to the new claim for benefits.) Because the definition in § 3.1(p) is a holdover from before the VCAA and was not intended to govern when VA must give section 5103(a) notice, VA does not view it as dispositive of the question. Furthermore, section 5103(a) does not specify whether VA must issue section 5103(a) notice upon receipt of an NOD. For the reasons we explain below, VA believes that Congress did not intend to require section 5103(a) notice upon VA's receipt of an NOD.

1. Congress intended VA to give section 5103(a) notice at the beginning of the claim process, but an NOD is filed after VA has decided a claim.

VA's claim process begins with the filing of an application. 38 U.S.C. 5101(a); 38 CFR 3.151(a), 3.152(a); *Hensley* v. *West,* 212 F.3d 1255, 1259 (Fed. Cir. 2000) (discussing claims process before VCAA's enactment). As stated, upon VA's receipt of a complete or substantially complete application, VA provides section 5103(a) notice. The claimant has a year from the date the notice is sent to respond. 38 U.S.C. 5103(b)(1). As we will further discuss, VA may decide the claim within that one-year period, but if the claimant subsequently submits relevant evidence within that one-year period, VA must readjudicate the claim. 38 CFR 3.159(b)(1). After notice of a decision on a claim is sent to the claimant, the claimant has up to one year to file an NOD with that decision. 38 U.S.C. 7105(b)(1); 38 CFR 20.302. Following receipt of an NOD, unless VA can resolve the disagreement through development or review action, VA will issue a statement of the case. 38 U.S.C. 7105(d)(1); 38 CFR 19.26. To perfect the appeal, the appellant has to file a substantive appeal in response to the statement of the case. 38 U.S.C. 7105(a), (d)(3); 38 CFR 20.200, 20.302(b)(1). Following VA's receipt of a substantive appeal, the appeal is certified to the Board.

From the above description of the claim process, it is apparent that, typically, an application starts the claim process and an NOD starts the appeal process after VA has decided a claim. However, the legislative history of the VCAA indicates that Congress intended VA to issue section 5103(a) notice early in the claim process. See S. Rep. No. 106–397, at 22 (2000) (''The Committee bill, in summary, modifies the pertinent statutes to reinstate VA's traditional practice of assisting veterans at the beginning of the claims process.''). The VCAA's legislative history indicates that Congress intended the new law to improve the efficiency of the adjudication process and the process by which subsequent claims for rating increases or service connection for additional conditions are handled, by ensuring proper development of the record when the claimant first submits an application for benefits. 146 Cong. Rec. S9211, S9212 (daily ed. Sept. 25, 2000) (statement of Sen. Rockefeller). The drafters wanted claimants to know early in the claim process what was necessary to substantiate their claims. Therefore, the VCAA was drafted to impose on VA the duty to issue section 5103(a) notice early in the claim process.

However, an NOD, which, as stated, is received in response to a decision on a claim and begins the appeal process for a decision on a claim, may fall within the § 3.1(p) definition of claim/application. We find nothing in section 5103(a)'s language or in the legislative history indicating Congressional intent to require VA to give another section 5103(a) notice upon receipt of an NOD.

2. Congress requires VA to issue a statement of the case in response to an NOD, so additional section 5103(a) notice would be redundant.

Upon receipt of an NOD, applicable law requires VA to review and, if necessary, further develop the evidence on the claim for which an NOD was filed. If such development or review

does not resolve the disagreement, VA is required to prepare a statement of the case. The statement of the case in effect provides the claimant and any representative with notice similar to the notice required by section 5103(a). A statement of the case must include a summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed and a citation of pertinent laws and regulations that controlled the decision. It also must include a discussion of how these laws and regulations affected the decision on the claim and a summary of the reasons for the decision made on each claim. 38 U.S.C. 7105(d)(1); 38 CFR 19.29. A statement of the case notifies a claimant of the evidence that VA received from the claimant and from other sources, and explains why that evidence dictated the result on that claim. A statement of the case therefore informs a claimant of the evidence needed to substantiate a claim for benefits addressed in the NOD. The requirement to issue a statement of the case could be viewed as being largely superfluous if section 5103(a) were interpreted to require VA to also provide notice under this section upon receipt of an NOD.

3. Giving section 5103(a) notice at the appeal stage of the claim process results in logical inconsistencies in the claim process.

Furthermore, interpreting section 5103(a) to require notice upon receipt of an NOD could result in the VA claim decision becoming final while the claimant still has time to submit the information and evidence necessary to substantiate a claim for benefits addressed in the NOD. Section 5103(b) of title 38, United States Code, provides a claimant one year to submit information or evidence requested in VA's section 5103(a) notice; however, an appellant has sixty days from the date VA mails a statement of the case, or the remainder of the one-year period beginning on the date notification of the determination being appealed is mailed, whichever period ends later, to file a formal or substantive appeal. 38 U.S.C. 7105(d)(3); 38 CFR 20.302(b). Thus, if the claimant does not complete the appeal initiated by the NOD or the Board decides the appeal before one year has elapsed from the date VA gave notice, VA's claim decision could become final while there is still time remaining to submit information and evidence necessary to substantiate a claim for benefits addressed in the NOD. Congress could not have intended such a result in this circumstance.

4. Not requiring section 5103(a) notice upon VA's receipt of an NOD would be consistent with case law governing such notice.

Besides the reasons given above regarding the intent of Congress, developing case law also supports not requiring section 5103(a) notice upon VA's receipt of an NOD. In *Pelegrini* v. *Principi,* 18 Vet. App. 112, 120 (2004), the United States Court of Appeals for Veterans Claims (CAVC) concluded that VA must provide section 5103(a) notice to a claimant seeking service connection before an initial unfavorable RO decision is made on the claim. The Court of Appeals for the Federal Circuit has agreed. *Mayfield* v. *Nicholson,* 444 F.3d 1328, 1334 (Fed. Cir. 2006). In *Dingess* v. *Nicholson,* 19 Vet. App. 473, 489 (2006), the CAVC added that VA must provide section 5103(a) notice to a claimant on the initial-disability rating and effective-date elements of a claim before the initial adjudication on them. Requiring section 5103(a) notice upon VA's receipt of an NOD would not satisfy these requirements because notice given following receipt of an NOD necessarily implies notice given after VA had already decided the claim. Furthermore, because the law requires that VA address the initial disability-rating and effective-date elements of a claim in the notice it gives upon receipt of an application, requiring notice on such elements upon VA's receipt of an NOD would be redundant.

Therefore, for the reasons stated above, we propose to state in a new paragraph, § 3.159(b)(3), that VA does not have a duty to provide the section 5103(a) notice upon receipt of an NOD.

Additionally, we propose to state that the section 5103(a) notice duty does not arise when the claimant is not eligible for the claimed benefit as a matter of law. In such circumstances, for example, in a claim for nonservice-connected disability pension when the claimant has no wartime service, there is no additional information or evidence the claimant could provide or VA could obtain that could substantiate the claim. This regulation would be consistent with the intent of Congress expressed in 38 U.S.C. 5103A(a)(2), which provides that ''[t]he Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.''

The legislative history of sections 5103(a) and 5103A(a) supports a conclusion that VA action under section 5103(a) is not required if there is no relevant information or evidence to obtain because the claim is barred as a matter of law. The House Committee on Veterans' Affairs' report on legislation that became the VCAA stated with regard to the provision that became 38 U.S.C. 5103A(a):

> This language * * * recognizes that certain claims, including those that on their face seek benefits for ineligible claimants (such as a veteran who seeks pension benefits but lacks wartime service), or claims which have been previously decided on the same evidence can be decided without providing any assistance or obtaining any additional evidence, and authorizes the Secretary to decide those claims without providing any assistance under this subsection.

H.R. Rep. No. 106–781, at 10 (2000), *reprinted in* 2000 U.S.C.C.A.N. 2006, 2012–13. Accordingly, Congress clearly contemplated that evidentiary development should not be required for claims that are barred as a matter of law.

Our analysis is also supported by the case law of the CAVC. In *Mason* v. *Principi,* 16 Vet. App. 129, 132 (2002), the CAVC rejected the claimant's contention that service during the 1980 Iran hostage situation constitutes wartime service for purposes of nonservice-connected disability pension pursuant to 38 U.S.C. 1521. The CAVC noted that there was no dispute as to the facts concerning the claimant's service and held that the claimant did not serve on active duty during a ''period of war'' as defined by 38 U.S.C. 101(11). *Id.* The CAVC further held that the VCAA was not applicable to the claim because the statute, and not the evidence, was dispositive of the claim. *Id.*; *see also Smith* v. *Gober,* 14 Vet. App. 227, 231–32 (2000) (VCAA does not affect issue of whether interest on past due benefits is payable pursuant to Federal statutes), *aff'd,* 281 F.3d 1384 (Fed. Cir. 2002); *Valiao* v. *Principi,* 17 Vet. App. 229, 232 (2003) (''[w]here the facts averred by a claimant cannot conceivably result in any disposition of the appeal other than affirmance of the Board decision, the case should not be remanded for development [under the VCAA] that could not possibly change the outcome of the decision''). Thus, if a claim cannot be granted because, under undisputed facts, the claimant as a matter of law is not entitled to the benefit sought, it is reasonable to conclude that no section 5103(a) notice to the claimant is required.

Therefore, VA proposes to state in § 3.159(b)(3) that no section 5103(a) notice duty arises ''[w]hen, as a matter of law, entitlement to the benefit claimed cannot be established, including, but not limited to, when the claimant is ineligible for the benefit sought due to lack of qualifying service, lack of veteran status, or other lack of legal eligibility.''

In addition to revising § 3.159 to ensure that the regulation is clear for

users and consistent with statutory requirements, we propose to amend 38 CFR 3.159(b)(1). First, we propose to remove the third sentence of current § 3.159(b)(1), which states that VA will request the claimant to provide any evidence in the claimant's possession that pertains to the claim. Section 3.159 generally implements the notice and development requirements of sections 5103(a) and 5103A. The three notice requirements in section 5103(a) are currently prescribed in § 3.159(b)(1) as follows: VA will notify the claimant (1) of the information and medical or lay evidence required to substantiate the claim, (2) of which information and evidence, if any, that the claimant is to provide to VA, and (3) of which information and evidence, if any, VA will attempt to obtain on behalf of the claimant. However, the third sentence of current § 3.159(b)(1) is not required by statute and is redundant of the three statutory requirements from the perspective of what the claimant needs to submit to support the claim. As such, it is unnecessary as part of the regulation.

In *Paralyzed Veterans of America* v. *Secretary of Veterans Affairs,* 345 F.3d 1334 (Fed. Cir. 2003), the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) addressed a specific challenge to the additional regulatory provision in § 3.159 that states that VA will request that the claimant provide any evidence in the claimant's possession that pertains to the claim. The Federal Circuit expressly agreed with VA's rationale that the additional provision merely assists ''the claimant by inviting any additional evidence that might help substantiate the claim.'' *Id.* at 1347. The Federal Circuit found that the additional provision was reasonable and ''effectively aimed at ensuring that the claimant makes the best showing possible to support his or her claim.'' *Id.* at 1348. However, the Federal Circuit stopped short of finding this ''additional regulatory provision'' to be necessary, especially in light of the other three requirements.

In *Pelegrini* v. *Principi,* 18 Vet. App. 112 (2004), although the content of the section 5103(a) notice was not expressly at issue, the CAVC commented that the regulatory provision stating that VA will request that the claimant provide any evidence in the claimant's possession that pertains to the claim ''can be considered a fourth element of the requisite notice'' under section 5103(a). *Id.* at 121. However, because a request that the claimant provide any evidence that pertains to the claim is redundant of the notice required by statute from the perspective of what the claimant needs to submit to support the claim, a claimant will not be prejudiced by deleting this regulatory provision. A claimant who receives a section 5103(a) notice containing the three statutory elements will have received the same information regarding what the claimant needs to submit to support the claim as the claimant would have received had the claimant received a letter containing the three statutory elements and an additional request that the claimant provide any evidence in the claimant's possession that pertains to the claim.

We wish to avoid the possibility that this regulatory provision, intended only to perpetuate VA's long-standing practice to invite a claimant to submit any evidence he or she wants VA to consider, may be misconstrued as a statutory requirement to include specific language in the notices parroting the sentence in the regulation. Therefore, we propose to delete the statement in current § 3.159(b)(1) that VA will also request that the claimant provide any evidence in the claimant's possession that pertains to the claim. To avoid the possibility of similar misunderstandings regarding the nature of this provision and to ensure consistency between the manual and regulatory provisions, we further propose to rescind the provision of paragraph I.1.B.3.b of the Veterans Benefits Administration Adjudication Procedures Manual M21–1MR (VBA Manual M21–1MR), which currently requires ROs to send a letter to the claimant in response to a substantially complete application that ''asks the claimant to submit any evidence in his/her possession that pertains to the claim.''

Second, for ease of use, we propose to add at the end of the second sentence of current § 3.159(b)(1) the term ''notice'' in parentheses, to use as a term of art within § 3.159(b)(1). The first two sentences of § 3.159(b)(1) describe the content of the section 5103(a) notice, and rather than repeating the language describing the content of the notice in the rest of § 3.159(b)(1), we propose to use the term ''notice'' to refer to the notice described in the first two sentences of § 3.159(b)(1).

Third, we propose to remove the fourth sentence of current § 3.159(b)(1). This sentence states: ''If VA does not receive the necessary information and evidence requested from the claimant within one year of the date of the notice, VA cannot pay or provide any benefits based on that application.'' This provision implemented language from section 5103 that was repealed by the Veterans Benefits Act of 2003, Public Law 108–183, section 701(b), 117 Stat. 2670. To ensure consistency with current law and the intent of Congress, we propose to replace this sentence with the following: ''The information and evidence that the claimant is informed that the claimant is to provide must be provided within one year of the date of the notice.''

Fourth, we propose to amend the fifth sentence of current § 3.159(b)(1), which states that VA may decide the claim if the claimant has not responded to the section 5103(a) notice within 30 days. We propose to provide 45 days as a reasonable period after which VA may decide a claim if no response to the section 5103(a) notice has been received. Therefore, we propose to change the 30-day period in § 3.159(b)(1) to a 45-day period. To ensure consistency between the manual and regulatory provisions, we further propose to rescind the provision of paragraph I.1.B.3.c of the VBA Manual M21–1MR, which currently advises ROs to ''inform the claimant that if he/she does not respond to the request for information within 60 days, VA may decide the claim based on all the information and evidence in the file.'' The 45-day period will provide a claimant with more time to respond to the section 5103(a) notice compared to the 30-day period in § 3.159(b)(1) and, at the same time, will allow VA to adjudicate the claim more expeditiously compared to the 60-day period in the manual provision. It is important to note that, regardless of whether VA decides a claim after the 45-day period, the claimant still has one year from the date of the section 5103(a) notice to submit the requested information and evidence.

Additionally, 38 U.S.C. 5103A(g), ''Other assistance not precluded,'' states, ''Nothing in this section shall be construed as precluding the Secretary from providing such other assistance under subsection (a) to a claimant in substantiating a claim as the Secretary considers appropriate.'' In accordance with section 5103A(g), VA promulgated § 3.159(c), obligating itself to give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) of § 3.159, relating to assistance with obtaining records, to an individual attempting to reopen a finally decided claim. *See* Duty to Assist, 66 FR 45,620, 45,628 (Aug. 29, 2001). In accordance with VA's intention to issue regulations when the Secretary deems it appropriate to provide the additional assistance in substantiating a claim contemplated in section 5103A(g), *see id.* at 45,629, we propose to add to § 3.159 a new paragraph (g), which states that the authority recognized in subsection (g) of 38 U.S.C. 5103A is reserved to the sole

discretion of the Secretary and will be implemented, when deemed appropriate by the Secretary, through the promulgation of regulations. The main purpose of this provision is to avoid the potential disparate treatment of similarly situated claimants that could arise from inconsistent use in various parts of the agency of open-ended authority to provide ''extra'' development assistance. Also, this provision is consistent with the Secretary's determination, in the prior rulemaking for § 3.159, of the appropriate level of assistance to be provided individuals based on VA's finite resources and the need to process claims in an efficient manner for the benefit of all veterans.

Last, we propose to clarify another aspect of § 3.159 to state that a medical examination or medical opinion is not necessary to establish a nexus between a current disability and service when a claimant satisfies the chronicity or continuity requirements in 38 CFR 3.303(b). Section 3.303(b) states, in pertinent part, as follows: ''With chronic disease shown as such in service (or within the presumptive period under § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes * * *. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word 'Chronic.' When the disease identity is established * * *, there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.'' If the chronicity or continuity requirements are met, there is no need for VA to provide a medical examination or medical opinion to determine whether there is a nexus between a veteran's current disability or death and some disease or symptoms during service. (Of course, a medical examination might be needed for some other reason, such as to determine the current level of disability in a claim for service connection.) We believe that it would be helpful to claimants, their representatives, and VA staff to explicitly state this within § 3.159(c)(4)(i), which covers medical examinations and medical opinions. We therefore propose to add the following sentence after the first sentence in § 3.159(c)(4)(i): ''A medical examination or medical opinion is not necessary to show a link between a veteran's current disability or death and some disease or symptoms during service when the evidence of record already satisfies the chronicity or continuity requirements in § 3.303(b).''

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action because it raises novel legal or policy issues.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing—Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116,Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing—Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: July 25, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 (subpart A) as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.159 as follows:

a. In paragraph (b)(1), at the end of the first sentence after the word ''claim'', add the following parenthetical ''(hereafter in this paragraph referred to as the ''notice'')''.

b. In paragraph (b)(1), at the beginning of the second sentence, add ''In the notice,''.

c. In paragraph (b)(1), remove the third sentence.

d. In paragraph (b)(1), remove the fourth sentence and add a new sentence in its place as set forth below.

e. In paragraph (b)(1), remove ''request'' each place it appears and add, in its place, ''notice''.

f. In paragraph (b)(1), remove ''30 days'' and add, in its place, ''45 days''.

g. Add paragraphs (b)(3), and (g).

h. In paragraph (c)(4)(i), at the end of the first sentence, a new sentence is added.

The revisions read as follows:

§ 3.159 Department of Veterans Affairs assistance in developing claims.

* * * * *

(b) * * *

(1) * * * The information and evidence that the claimant is informed that the claimant is to provide must be provided within one year of the date of the notice. * * *

* * * * *

(3) VA has no duty to provide the notice described in paragraph (b)(1) of this section at times other than upon its receipt of a complete or substantially complete application. No such duty arises:

(i) Upon receipt of a Notice of Disagreement.

(ii) When, as a matter of law, entitlement to the benefit claimed cannot be established, including, but not limited to, when the claimant is ineligible for the benefit sought due to lack of qualifying service, lack of veteran status, or other lack of legal eligibility.

(Authority: 38 U.S.C. 5103(a), 5103A(a)(2))

(c) * * *

(4) * * *

(i) * * * A medical examination or medical opinion is not necessary to show a link between a veteran's current disability or death and some disease or symptoms during service when the evidence of record already satisfies the chronicity or continuity requirements in § 3.303(b). * * *

* * * * *

(g) The authority recognized in subsection (g) of 38 U.S.C. 5103A is reserved to the sole discretion of the Secretary and will be implemented, when deemed appropriate by the Secretary, through the promulgation of regulations.

(Authority: 38 U.S.C. 5103A(g))

[FR Doc. E6–18180 Filed 10–30–06; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0539, EPA–R05–OAR–2006–0610; FRL–8224–4]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve requests submitted by the Indiana Department of Environmental Management on December 21, 2005 and June 27, 2006 to revise the Indiana State Implementation Plan (SIP) in two areas: (1) To amend 326 IAC 1–3–4, ambient air quality standards, to provide consistency between state and federal reference conditions for measurements of particulate matter air quality; and (2) to update the references to the Code of Federal Regulations (CFR) from the 2002 edition to the 2004 edition.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before November 30, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0539, EPA–R05–OAR–2006–0610 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov*.
- *Fax:* (312)886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch(AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch(AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Jonathan Nichols, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7942, *nichols.jonathan@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting

on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 14, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. E6–18168 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0747, FRL–8231–6]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address permitting requirements.

DATES: Any comments on this proposal must arrive by November 30, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0747, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
- E-mail: *R9airpermits@epa.gov.*
- Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local AVAQMD Rule 442. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 1, 2006.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E6–18172 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

Docket No. NHTSA–06–26140; Notice 1

RIN 2127–AJ95

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice addresses the confidentiality of certain information that manufacturers of motor vehicles and motor vehicle equipment submit to NHTSA pursuant to the Early Warning Reporting (EWR) rule. The agency is proposing to create class determinations, based on Exemption 4 of the Freedom of Information Act (FOIA), treating certain categories of EWR information as confidential, namely production numbers (excluding light vehicles), consumer complaints, paid warranty claims, and field reports. In addition, for EWR reports on deaths and injuries, NHTSA is proposing to create a class determination based on FOIA Exemption 6 that the last six (6) characters of the vehicle identification number (VIN) are confidential. Finally, the agency is also proposing to clarify its Confidential Business Information rule with regard to confidentiality markings in submissions in electronic media.

DATES: Comments on the proposal are due January 2, 2007.

See the **SUPPLEMENTARY INFORMATION** portion of this document for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

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

- *Web site:* <*http://dms.dot.gov*>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to <*http://www.regulations.gov*>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <*http://dms.dot.gov*>, including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to <*http://dms.dot.gov*> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Information Submissions Before and After the EWR Rule Became Effective
A. Pre-TREAD Act Transmissions of Information to NHTSA
B. The Early Warning Reporting Requirements
C. Manufacturer Submissions of EWR Information
III. The Proposed Rule on the Confidentiality of EWR Information
A. Class Determinations Based on FOIA Exemption 4
1. Basis for Exemptions
2. Proposed Class Determinations on the Confidentiality of EWR Data
a. Production Numbers
b. Consumer Complaints
c. Warranty Claims
d. Field Reports
e. Common Green Tire Identifiers
f. Other Issues To Be Considered
B. EWR Class Determination Based on FOIA Exemption 6
IV. Exemption 3
V. Other EWR Data
VI. Identifying Confidential Information Located in Electronic Files
VII. Request for Comments
VIII. Privacy Act Statement
IX. Regulatory Analyses and Notices
A. Executive Order 12866 and DOT Regulatory Policies and Procedures
B. Regulatory Flexibility Act
C. National Environmental Policy Act
D. Executive Order 13132 (Federalism)
E. Unfunded Mandate Reform Act
F. Executive Order 12988 (Civil Justice Reform)
G. Paperwork Reduction Act
H. Executive Order 13045
I. Regulation Identifier Number (RIN)

I. Background

In 1966, the Congress enacted the National Traffic and Motor Vehicle Safety Act (Safety Act), for the purpose of reducing traffic accidents and deaths and injuries to persons resulting from traffic accidents. 49 U.S.C. 30101.[1] Since it was amended in 1974,[2] the Safety Act has contained a series of provisions that address motor vehicles and motor vehicle equipment that contain a potential or actual defect that is related to motor vehicle safety.

First, the Act requires a manufacturer to notify NHTSA and the vehicle or equipment owners if it learns of a defect and decides in good faith that the defect is related to motor vehicle safety. 49 U.S.C. 30118(c). This duty is independent of any action by NHTSA.[3] Ordinarily, a manufacturer's notice is followed by the manufacturer's provision of a free remedy to owners of defective vehicles and equipment. *See* 49 U.S.C. 30120. Collectively, the manufacturer's notice and remedy are known as a recall.

Second, Congress provided NHTSA with considerable investigative and enforcement authority. The Safety Act authorizes NHTSA to conduct investigations and to require manufacturers to submit reports to enable the agency to determine compliance with the statute. 49 U.S.C. 30166(b), (e). In addition, NHTSA may initiate administrative enforcement proceedings to decide whether a motor vehicle or motor vehicle equipment contains a safety-related defect or does not comply with applicable standards. An investigation may culminate in NHTSA's order to the manufacturer to provide notification of a safety-related defect or a noncompliance to owners of the vehicle or equipment. 49 U.S.C. 30118(a)–(b).

As a practical matter, if a manufacturer has not submitted a notice of a safety-related defect to NHTSA and if the agency has not received information that provides a sufficient basis for the opening of an investigation, it has been unlikely that NHTSA would investigate a potential problem. This practical limitation on NHTSA's investigations manifested itself in 2000. Under the limited level of reporting then required, the agency lacked sufficient information to identify defects in Firestone tires mounted on Ford Explorers.[4] Numerous fatalities occurred before NHTSA opened an investigation and Firestone conducted recalls.

On November 1, 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Pub. L. No. 106–414, 114 Stat. 1800. The TREAD Act added provisions to the Safety Act that expanded the scope of the information manufacturers submit to NHTSA prior to a manufacturer-initiated recall. In relevant part, the TREAD Act required the Secretary of Transportation to publish a rule setting out the early warning reporting (EWR) requirements to enhance the agency's ability to carry out the Act. 49 U.S.C. 30166(m). In general, the TREAD Act authorized the agency to require manufacturers to submit information that may assist in the early identification of defects related to motor vehicle safety. *Id.*

In July 2002, NHTSA promulgated the EWR rule. 67 FR 45822 (July 10, 2002).[5] Generally, the EWR rule required certain manufacturers of motor vehicles (*e.g.*, automobiles and other light vehicles, trucks, buses, motorcycles, and trailers) and motor vehicle equipment (*e.g.*, tires and child restraints) to submit data regarding production numbers (cumulative total vehicles or equipment manufactured annually), incidents involving death or injury based on claims and notices, property damage claims, consumer complaints, warranty claims paid, and field reports (collectively ''early warning data'') on a quarterly basis. *See* 49 CFR 579.21–26. The information is submitted electronically to the agency in a standardized format.[6]

The EWR rule did not address the confidentiality of EWR data, but noted that this issue would be considered as

[1] Pub. L. No. 89–563, 80 Stat. 718. This preamble will use the current citations to the United States Code. In 1994, the Safety Act, as amended, was repealed, reenacted, and recodified without material change as part of the recodification of Title 49 of the United States Code. *See* Pub. L. No. 103–272, 108 Stat. 745, 1379, 1385 (1994) (repealing); *id.* at 745, 941–73 (1994) (reenacting and recodifying without substantive changes).

[2] Pub. L. No. 93–492, 88 Stat. 1470 (1974).

[3] *United States* v. *General Motors Corp.,* 574 F. Supp. 1047, 1049 (D.D.C. 1983).

[4] Background information on this matter is available through NHTSA's defects investigation Web site at *http://www-odi.nhtsa.dot.gov/cars/problems/defect/defectsearch.cfm*. Enter ''EA00023'' in the ''NHTSA Action Number'' box and click on ''search''.

[5] Thereafter, NHTSA published amendments to the EWR rule. As used herein, the references to the EWR rule are to the rule as amended. The reader should note that the discussion of the EWR rule in this notice is a summary. The full text of the rule and associated **Federal Register** notices should be consulted for a full description.

[6] Subsequently, in response to petitions for reconsideration, the rule was amended but these amendments are not germane to the rulemaking at hand.

part of the proposed amendments to NHTSA's confidential business information rule. *See* 67 FR at 45866, n.6. The agency addressed the confidentiality of EWR data in its July 2003 final rule on Confidential Business Information (CBI) rule. 49 CFR part 512, 68 FR 44209 (July 28, 2003). In addition to establishing revised general requirements governing claims of confidentiality and NHTSA rulings on these claims, the CBI rule addressed the confidentiality of EWR data. The CBI rule established a new Appendix C setting forth class determinations treating EWR information on production numbers (excluding light vehicles), consumer complaints, warranty claims, and field reports as confidential. 49 CFR part 512 App. C. Other EWR data were not specifically covered by the CBI rule. The agency based these class determinations on the substantial competitive harm and impairment standards of Freedom of Information Act (FOIA) Exemption 4. *See* 5 U.S.C. 552(b)(4); 49 CFR part 512 App. C.

In April 2004, NHTSA responded to petitions for reconsideration of the July 2003 CBI rule. 69 FR 21409 (April 21, 2004). The agency amended the rule by adding two class determinations to Appendix C based on FOIA Exemptions 4 and 6. One class determination, based on Exemption 4, covered common green tire identifiers submitted by tire manufacturers under 49 CFR 579.26(d).[7] The Exemption 6 class determination covered the last six (6) characters of vehicle identification numbers (VINs) contained in EWR death and injury reports submitted to NHTSA. *See e.g.*, 49 CFR 579.21(b)(2).

Public Citizen challenged the legality of Appendix C to 49 CFR part 512. In a March 31, 2006 decision, the United States District Court for the District of Columbia ruled that NHTSA had the authority to promulgate the rule making categorical confidentiality determinations for classes of EWR data. *Public Citizen, Inc.* v. *Mineta,* 427 F. Supp. 2d 7, 12–14 (D.D.C. 2006). The District Court also concluded, however, that NHTSA had not provided adequate notice and opportunity to comment on those determinations at the time of the proposed rule, *id.* at 14–17. The Court remanded the matter to NHTSA but did not address the parties' other claims. *Id.* Thereafter, intervenor Rubber Manufacturers Association (RMA) filed a motion to amend the judgment to address its claim that the disclosure of EWR data was precluded by a specific disclosure provision in the TREAD Act, 49 U.S.C. 30166(m)(4)(C).[8] RMA asserted that this provision met the requirements of FOIA Exemption 3, which allows the withholding of information prohibited from disclosure by another statute. 5 U.S.C. 552(b)(3).

In a supplemental memorandum opinion filed on July 31, 2006, the Court accepted RMA's argument that it should consider the Exemption 3 claim, but held that the TREAD Act's disclosure provision was not an Exemption 3 statute. *See Public Citizen, Inc.* v. *Mineta,* 444 F. Supp. 2d 12 (D.D.C. 2006). On August 24, 2006, RMA filed a motion seeking either a judgment under Federal Rule of Civil Procedure 54(b) or certification of interlocutory appeal under 28 U.S.C. 1292(b) of the District Court's decision regarding Exemption 3. On September 5, 2006, the District Court granted RMA's motion. On September 28, 2006, RMA filed a Notice of Appeal of the Judgment of July 31, 2006 and associated orders.

In light of the District Court's decisions, NHTSA is proposing a rule to address the confidentiality of EWR information through specific class determinations based on FOIA Exemptions 4 and 6. Our proposal, which sets forth determinations largely similar to our prior determinations, addresses the District Court's notice and comment concerns.

II. Information Submissions Before and After the EWR Rule Became Effective

A. Pre-TREAD Act Transmissions of Information to NHTSA

Prior to the enactment of the TREAD Act, NHTSA received information on potential and actual safety-related defects in motor vehicles through several primary mechanisms. First, vehicle owners submitted complaints (also known as vehicle owner questionnaires (VOQs))[9] to NHTSA's Office of Defects Investigation (ODI). These complaints tended to identify problems consumers had experienced in their vehicles. Second, manufacturers provided copies of technical service bulletins and other communications transmitted to more than one manufacturer, dealer or owner. *See* 49 U.S.C. 30166(f); 49 CFR 579.5 (2002–2005), 573.8 (1995–2001). Third, manufacturers submitted information to the agency during investigations of particular vehicles and equipment (such as tires) undertaken by ODI. Finally, manufacturers submitted reports that certain motor vehicles and equipment contained safety-related defects pursuant to 49 CFR part 573 (Defect and Non-Compliance Responsibility and Reports) after determining that such a defect exists. *See* 49 U.S.C. 30118(c).

On average, during the five years preceding the TREAD Act, ODI conducted approximately 83 investigations of potential safety related defects per year. On average, 64 of these were first stage investigations known as Preliminary Evaluations (PEs). The remaining ones were second-stage investigations—Engineering Analyses (EAs).

During the five (5) years following enactment of the TREAD Act, these numbers have remained roughly the same, with the agency conducting approximately 84 investigations annually (66 PEs, 28 EAs). In most of these investigations, ODI issued information requests to manufacturers. A review of the submissions received from manufacturers over a recent one-year period revealed that nearly every PE or EA submission to the agency involved a request for confidential treatment.[10]

B. The Early Warning Reporting Requirements

The TREAD Act dramatically changed the nature and amount of information manufacturers submit to NHTSA. The EWR rule requires specified manufacturers to submit a broad array of information on each make and model of vehicle and child seat, and substantial tire line that they manufacture. The EWR requirements apply mainly to larger manufacturers of motor vehicles and tires, and all manufacturers of child restraint systems (*see* 49 CFR part 579). In general, vehicle manufacturers who annually produce 500 or more vehicles in a category must submit quarterly reports with regard to the following categories of vehicles: light vehicles, medium-heavy vehicles and buses, trailers, and motorcycles. The reporting information required of these manufacturers is summarized below:

- *Production.* These manufacturers must report the number of vehicles, child restraint

[7] The term ''common green tires'' refers to ''tires that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.'' 49 CFR § 579.4.

[8] In reference to information provided by manufacturers pursuant to the EWR rule, 49 U.S.C. § 30166(m)(4)(C) states: ''Disclosure. None of the information collected pursuant to the final rule promulgated under paragraph (1) [the EWR rule] shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.''

[9] *See http://www-odi.nhtsa.dot.gov/ivoq/.*

[10] Out of 276 requests for confidential treatment we received from July 1, 2005 through June 30, 2006, approximately 30% (83) involved requests related to a PE (52) or EA (31). These numbers do not include requests related to other enforcement-related activities, such as compliance investigations or recall-related queries.

systems, and tires, by make, model, and model (or production) year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).

• *Consumer complaints.* These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims, as discussed below.

• *Property damage.* These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.

• *Warranty claims information.* These manufacturers must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they pay that are related to problems with certain specified components and systems. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.

• *Field reports.* These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems. In addition, manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers.

• *Deaths.* These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in a foreign country that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.

• *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.

C. Manufacturer Submissions of EWR Information

EWR reporting was phased-in, with the first quarterly EWR reports submitted on or about December 1, 2003. Field reports (copies of non-dealer reports) were first submitted on or about July 1, 2004. 68 FR 35145, 35148 (June 11, 2003) (specifying deadline submissions for EWR reports). Since the EWR rule's data submission requirements began in December 2003, manufacturers have submitted large amounts of information. Over 500 manufacturers have regularly submitted reports and collectively submitted thousands of reports, making the volume of the incoming data extensive. NHTSA has received reports on more than 8 million consumer complaints, 138 million warranty claims, and nearly 5 million field reports (all aggregated) from light vehicle manufacturers. Other manufacturers have also provided a large volume of aggregated data for the agency to analyze: heavy and medium bus manufacturers—over 246,000 consumer complaints, nearly 7 million warranty claims, and nearly 245,000 field reports; trailer manufacturers—nearly 66,000 consumer complaints, over 1.2 million warranty claims, and over 18,000 field reports; motorcycle manufacturers—over 35,000 consumer complaints, over 687,000 warranty claims, and over 91,000 field reports; tire manufacturers—over 1 million warranty claims; and child restraint manufacturers—nearly 43,000 warranty claims and over 7,000 field reports.

III. The Proposed Rule on the Confidentiality of EWR Information

A. Class Determinations Based on FOIA Exemption 4

In view of the Court's decision in *Public Citizen, Inc.* v. *Mineta,* NHTSA is initiating a new rulemaking proceeding and proposing to adopt class determinations that address the confidential treatment of certain EWR information. In general, NHTSA is proposing to adopt the class determinations promulgated in 2003 and 2004.[11] The new class determinations we are proposing for EWR data are based on FOIA Exemption 4 and would be set out in a new Appendix C to 49 CFR part 512, which would read as follows:

Appendix C—Early Warning Reporting Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579 subpart C, will cause substantial competitive harm and will impair the government's ability to obtain this information in the future if released:

(1) Reports and data relating to warranty claim information;

(2) Reports and data relating to field reports, including dealer reports, product evaluation reports, and hard copies of field reports; and

(3) Reports and data relating to consumer complaints.

(b) In addition, the Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm if released:

(1) Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles, as defined in 49 CFR 579.4(c); and

(2) Lists of common green tire identifiers.

1. Basis for Exemptions

Consistent with our prior approach, the agency proposes creating categories based on Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). Under Exemption 4, the standard for assessing the confidentiality of required submissions of information is whether disclosure is likely either to cause substantial competitive harm to the originating entity or to impair the government's ability to obtain necessary information in the future. *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974). Meeting the competitive harm standard requires that there be ''actual competition and a likelihood of substantial competitive injury'' from disclosure of the information. *CNA* v. *Donovan,* 830 F.2d 1132, 1152 (D.C. Cir. 1987). Assessing the effect of disclosure under the impairment prong requires a ''rough balancing'' of the extent of impairment and the information's importance against the public's interest in disclosure. *Washington Post* v. *Dep't of Health and Human Services,* 690 F.2d 252, 269 (D.C. Cir. 1982).

We note that motor vehicle and motor vehicle equipment manufacturers who are required to submit EWR data operate in a highly competitive business environment. *See http://stats.bls.gov/oco/cg/cgs012.htm* (generally describing the nature of the motor vehicle and parts industry). In light of the highly competitive environment in which these manufacturers operate, the comprehensive EWR data that they submit possess commercial value to the submitting manufacturers, competitors, and others such as suppliers who are interested in these types of data. These data are standardized and, as discussed above, the EWR reports contain identical informational elements for

[11] Minor changes from the 2003 rule, as amended in 2004, are reflected in this proposed new Appendix C. One change parallels proposed changes to the EWR rule involving the identification of product evaluation reports. The proposed changes to the EWR regulation were published on September 1, 2006. 71 FR 52040. Another change to Part 512 is the relocation of Appendix C's subparagraph addressing common green tires.

each regulated manufacturer category under the EWR rule. *See* 49 CFR part 579 subpart C. These reports are submitted pursuant to standardized electronic reporting templates that are used repeatedly from reporting period to reporting period. Each manufacturer in a regulatory category reports on the same systems and components and provides a snapshot of that manufacturer's experience for each of the standard informational elements.

Further, as we explain below, under the TREAD Act, manufacturers need only produce that information which they already collect. In light of this fact, on balance, the disclosure of certain categories of EWR information (consumer complaints, warranty claims, and field reports) is more likely to cause manufacturers to scale back their collection efforts, which would impair the agency's ability to obtain EWR data in future submissions, than if the information were not disclosed. Without the collection of comprehensive data by manufacturers, the effectiveness of the EWR program would be adversely impacted.

Additionally, as reflected by the number of EWR submissions when compared to the number of confidentiality requests that manufacturers submit to the agency in the course of defect investigations noted above, if NHTSA were to attempt to process individualized requests for confidentiality of individual EWR submissions, the agency would be overwhelmed. A huge backlog would develop and grow. During the time that NHTSA was processing these requests for confidentiality, nothing would be released. The situation would be similar to the substantial FOIA request backlog experienced at some agencies. Moreover, submissions would not be released until the individual processing was completed. The net effect would be to hamper agency efforts to address these claims for confidential treatment expeditiously and likely divert resources from other efforts, including pursuing other enforcement activities. The District Court recognized this possibility when it ruled that categorical rules that address the confidentiality of EWR data are necessary ''to allow the agency to administer the EWR program effectively,'' *Public Citizen,* 427 F. Supp. 2d at 13, and that the agency was ''justified in making categorical rules to manage the tasks assigned to it by Congress under the TREAD Act.'' *Id.*

In the recent *Public Citizen* case, the parties submitted briefs on NHTSA's authority to issue categorical determinations. The court accepted NHTSA's position that the agency had the authority to do so. *Id.*

2. Proposed Class Determinations on the Confidentiality of EWR Data

Based on NHTSA's authority, as recently confirmed in the District Court's decision, to make categorical class determinations, we are proposing to create such classes based on Exemption 4 for the EWR data categories listed below.

a. Production Numbers

The EWR rule requires certain manufacturers to submit the number of vehicles, tires and child restraint systems, by make, model, and model (or production) year, produced during the model year of the reporting period and the prior nine model years (prior four years for child restraint systems and tires). *See* 49 CFR 579.21–26.

Production figures for models of motor vehicles, other than light vehicles, and for tires and child restraints are not publicly available.[12] As noted above, NHTSA proposes to include EWR production figures, other than for light vehicles, in a class determination of confidentiality based on the competitive harm prong of *National Parks.* EWR production data reveal a variety of valuable information, including a company's production capacity, the sales and market performance of its individual products,[13] and the success of its marketing strategies. This market-related information would be valuable to the reporting manufacturer's competitors, who commonly want to know how well products sell, including how well their competitors' products have been and are selling. The competitors would use the production information in their own product planning and marketing. For example, the release of this EWR production information would likely have the following impacts: (1) Medium-heavy vehicle manufacturers would use a rival's production information to monitor the competitor's production capacity (which would reveal that competitor's capacity to manufacture certain products) and, separately, suppliers would use the information to gain a competitive advantage over a submitter during pricing negotiations, in instances such as when they could determine that they are the sole supplier; (2) bus manufacturers would use production information to chart the overall market and the strengths and weaknesses of the reporting entity's business within specific makes and models; (3) because product plans are based upon an evolution of production direction and experience, disclosure of motorcycle production information would expose manufacturers' future plans to competitors; (4) child restraint manufacturers would use production data to assess their competitors' production capabilities, sales and market performance through means otherwise unavailable without considerable market research expense; and (5) the disclosure of tire production numbers by brand and size would result in competitive harm to the manufacturers by revealing specific and critical information about those companies' sales and marketing strategies. We note that in the context of individual investigations, the agency has generally granted confidential treatment to production data on child restraints and tires submitted to NHTSA but released past light vehicle production numbers, which, as noted above, are generally available to the public and have generally not been granted confidential status.

b. Consumer Complaints

The EWR rule requires larger volume vehicle manufacturers and all child restraint manufacturers to submit the number of consumer complaints received broken out, for each make and model, by specific categories such as system component, fire and rollover—all of which are binned by code. 49 CFR 579.4, 579.21–26. Consumer complaints are defined by the regulation as:

> [A] communication of any kind made by a consumer (or other person) to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer Web site that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit within the manufacturer that receives consumer inquiries or complaints, including telephonic complaints, expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but

[12] The basis for excluding EWR production data on light vehicles (''any motor vehicle, except a bus, motorcycle, or trailer, with a gross vehicle weight rating of 10,000 lbs or less,'' 49 CFR § 579.4) from the proposed class determination on confidentiality is that those data are publicly available. Information that is already publicly available cannot be withheld by an agency under Exemption 4. *Niagara Mohawk Power Corp.* v. *Dep't of Energy,* 169 F.3d 16, 19 (D.C. Cir. 1999). We note that more detailed production data on light vehicles, such as detailed production information by engine and transmission combination, is not publicly available and has been granted confidentiality.

[13] *See, e.g. http://www.claritas.com/claritas/Default.jsp?ci=2&pn=cs_bmwusa.*

not including a claim of any kind or a notice involving a fatality or injury.[14]

NHTSA proposes to include EWR consumer complaint data in a class determination of confidentiality based on both the competitive harm and impairment prongs of *National Parks*. The commercial value of consumer complaint data is well-recognized. Complaint data are a valuable data source used by companies to help them identify areas of concern, including product performance, to consumers and provide guidance on where to allocate their limited resources.[15] The disclosure of EWR complaint numbers would provide competitors with aggregated data on the performance of entire product lines and key, individual systems and/or components. In view of the competitive value of these data, NHTSA has tentatively concluded that the release of EWR consumer complaint data would cause substantial harm to the competitive position of the manufacturer that collected and reported them.

Companies may receive customer input and feedback on product performance in a variety of ways and establish differing practices for the receipt of customer complaints, which are taken into account by the definition of consumer complaint. To obtain these data, companies may, for example, increase the staff available at their toll-free telephone numbers or create web-based systems through which consumers can make complaints instantly by electronic mail. More consumer input channels increase the robustness of the available data. In addition to providing valuable information to the company, consumer complaints provide feedback on product performance that can be valuable to NHTSA in identifying problems, including potential defects that may point to the presence (or absence) of a safety problem. The agency seeks to ensure that it receives as much information as possible to identify possible defect trends.

Under the early warning reporting provisions of the Safety Act, however, NHTSA may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer. 49 U.S.C. 30166(m)(4)(B). In other words, NHTSA may require manufacturers to submit reports based on information that they have collected but may not require manufacturers to collect information not otherwise collected.

In view of the fact that the quantity and comprehensiveness of the EWR consumer complaint data depend in substantial part on the willingness of manufacturers to collect this information through a broad and multi-input approach, NHTSA does not want to take steps that discourage the collection efforts. NHTSA is concerned that the routine disclosure of EWR consumer complaint information would discourage these efforts, and ultimately reduce the amount of information manufacturers collect. This would impair our ability to obtain this information in the future for analysis. It would adversely impact not only the EWR program as a whole, but a reduction in complaint data would also significantly impact individual investigations in which ODI routinely considers and follows up on such data. The disclosure of these data, however, would be of limited value to the public. Complaint data frequently involves issues that are not safety-related. On balance, the importance of the information to the agency's ability to help it identify potential safety defects and the associated impairment outweigh the smaller interest in its public disclosure. Thus, the agency proposes to withhold these data under Exemption 4.

c. Warranty Claims

Under the EWR rule, manufacturers of more than 500 vehicles per year and tire manufacturers must report warranty claims (warranty adjustments for tire manufacturers) they paid for specified components and systems broken down by component, make, model and model year. 49 CFR 579.21–26. Repairs made outside of warranties that are covered by ''good will'' are also reported under warranty claims and warranty adjustments.[16] 49 CFR 579.4.

Manufacturers of child restraint systems must combine these data with the number of reportable consumer complaints. The warranty information is reported on a detailed make/model basis and categorized with reference to the twenty-two categories defined in the EWR regulation.

NHTSA proposes to include EWR warranty data in a class determination of confidentiality based on both the competitive harm and impairment prongs of *National Parks*. Warranty claims data generally reflect a repair paid for by a manufacturer under a warranty. The commercial value of warranty complaint data is well known. Warranty data are a valuable data source used by companies in identifying problem trends early in the life of a vehicle or equipment, before the expiration of the warranty. The EWR warranty data provide comprehensive, competitively valuable information about the field experience of components and systems across all makes and models. Many components and systems are updated over time to incorporate new technologies or to achieve cost savings. They may be provided by different suppliers. The manufacturer's warranty experience with various components and systems is a valuable dataset.[17] The disclosure of EWR warranty numbers would provide competitors with aggregated data on the performance of entire product lines and key, individual systems and/or components. Competitors would use this information to assess the in-use performance of parts and systems. It would be used in purchasing, pricing, and sourcing decisions, all of which would be likely to have competitive impacts. Accordingly, NHTSA has tentatively concluded that the release of the EWR warranty data would cause substantial harm to the competitive position of the manufacturer that collected and reported them.

Warranties vary in length (*e.g.*, years, miles) and scope (*e.g.*, 3 years/36,000

[14] 49 CFR § 579.4(c).

[15] *See e.g.*, John Goodman & Steve Newman, Six Steps to Integrating Complaint Data into QA Decisions, 36 Quality Progress, Issue 2 (Feb. 1, 2003) (stressing the importance of complaint data in helping to identify issues with products and the data's effectiveness in assisting companies with resource allocation decisions to address quality assurance issues) and Edward Bond & Ross Fink, Meeting the Customer Satisfaction Challenge, 43 Industrial Management, Issue 4 (July 1, 2001) (noting the importance of measuring customer satisfaction, describing customer complaints as a data source to a company that can create a ''big benefit'' from small changes, and emphasizing the need for companies to make it convenient for consumers to complain). Both articles are available in Docket No. NHTSA–2002–12150, Item No. 65.

[16] These data include ''good will'' repairs that are conducted and paid for by the manufacturer outside of the warranty. ''Good will'' means ''the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.'' 49 CFR § 579.4.

[17] Published reports illustrate the extent to which the industry as a whole relies on and uses sensitive warranty information. For example, GM uses its warranty data to help it pinpoint problem areas and to help it reduce its warranty costs. *See, e.g.*, Gregory L. White, GM Takes Tips from CDC to Debug its Fleet of Cars, Wall St. J., April 8, 1999, at B1 (noting GM's adaptation of the epidemiological system used by the Centers for Disease Control and Prevention to warranty issues) and A Message to Dealers Regarding the Ford Recall of Firestone Wilderness AT Tires and General Motors Continued Use of Firestone Tires on its Vehicles, (May 25, 2001) (stating that GM and Firestone tire engineers ''are on site at GM's tire and wheel laboratory two days a week'' to ''monitor tire warranty data''). Both of these documents are available in Docket No. NHTSA–2002–12150, Item No. 65.

miles vs. 4 years/50,000 miles). Other things being equal, we believe that companies with more generous warranty and good will programs will have a higher number of warranty claims than those with more limited policies. The more generous the warranty policies (such as longer warranty coverage), the more warranty data that will be subject to disclosure to NHTSA.

Because of the data's commercial value and the manner in which they can be used, the disclosure of this information would reduce the willingness of manufacturers to maintain extensive warranty programs including extended warranties and good will, which could ultimately reduce the availability of robust warranty information in the future. ODI would have substantially less information to analyze in investigating potential defects.[18] Also consumers would receive fewer free repairs under warranty programs, which in addition to being economically disadvantageous, would in some instances adversely affect motor vehicle safety because vehicles would not be repaired. However, the EWR information would not be useful to the public in comparing vehicles or equipment because of the differences in warranty terms and corporate warranty practices—which would could cause the public to derive incorrect conclusions from the information. The rough balancing under the impairment prong weighs in favor of withholding this information, as the public interest favoring disclosure is small and the adverse effects accompanying disclosure are substantial. Thus, the agency proposes to withhold EWR warranty information under Exemption 4.

d. Field Reports

Field reports are communications from a manufacturer's representative or dealer about a malfunction or performance problem. 49 CFR 579.4. The EWR rule requires manufacturers of specified vehicles and child restraints to provide information on field reports and copies of non-dealer field reports. In general, as in other categories of EWR data, the field report data are provided by make, model and model year and, further, by numerous specified systems and components. 49 CFR 579.21–25.

Field reports reflect the in-use experience of a manufacturer's product, collected by the company at its expense and with the intent of identifying problems with its products. The nature, quality and quantity of field reports vary, with reports from some companies reflecting their pursuit of detailed feedback, and those from others yielding less information. For others, a field report is more akin to a technical investigation into a problem detected through warranty, consumer complaint or other information available to the company.

NHTSA proposes to include EWR field report information in a class determination of confidentiality based on both the competitive harm and impairment prongs of *National Parks*. Field report information would identify systems and components that have experienced malfunction or performance issues, in quantitative terms in all products. More particularly, the field reports would reveal specific problems associated with particular components and systems. Overall, the information would reveal aspects of a vehicle's performance (whether potentially safety-related or not) that a manufacturer deems important in its commercial efforts. If EWR field report information were disclosed, the reporting manufacturer's competitors would have access to comprehensive data involving malfunction or performance issues covering all products. Such information, if publicly released, would be of substantial value to competitors, who could avert similar issues or improve their products without the need to invest in market research, engineering development, or actual market experience. NHTSA has tentatively concluded that their release would cause substantial harm to the competitive position of the manufacturer that collected and reported them.

Manufacturers' decisions to obtain field reports are discretionary and practices vary among manufacturers. The disclosure of field report data would discourage manufacturers from initiating field reports. This would lead to fewer and less reliable field reports available to the agency in the future to identify potential safety defects promptly. Field reports are particularly valuable in identifying areas of potential concern to manufacturers. Some of these reports have also been indicative of potential defect trends. Since the agency can require only that manufacturers submit information about, and copies of, those field reports that companies choose to prepare and/or obtain, there is a substantial risk that the agency's ability to obtain this information in the future would be impaired, which would adversely affect the program's effectiveness. *See* 49 U.S.C. 30166(m)(4)(B). By contrast, the value of these data would be limited to the public. The technical data and reports of the number of field reports would not readily identify safety-related issues. As such, the agency does not believe that these data and numbers would contain information that would be informative to the public with regard to vehicle safety. In balancing the interests in disclosure, the agency has tentatively concluded that the impacts to the agency's ability to identify safety defects from these technically-rich reports—as well as the competitive impacts to submitters—outweigh the interest the public has in disclosure of this information. Consequently, the agency proposes to withhold this information under Exemption 4.

e. Common Green Tire Identifiers

The EWR rule requires certain tire manufacturers to provide a list of common green tire data. 49 CFR § 579.26(d). ''Common greens'' are tires ''that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.'' 49 CFR 579.4(c). NHTSA proposes to include EWR common green tire data in a class determination of confidentiality based on the competitive harm prong of *National Parks*. The common green tire information reveals the identities of tires that share the same internal specifications and relationships between manufacturers and private brand name owners. Tire manufacturers previously indicated that these data are particularly valuable because they permit competitors to assess individual manufacturer capabilities and marketing strategies. 69 FR at 21417.

f. Other Issues To Be Considered

In addition to comments on the above, we seek comments on the proposed approach. This includes whether the proposed categories for certain EWR data (*i.e.*, those data covering non-light vehicle production, consumer complaints, warranty claims, field reports, and common green tires) should be held confidential by class determinations based on Exemption 4. For example, we invite commenters to

[18] Manufacturers may choose to make available to their customers warranties of longer duration and broader mileage (*e.g.*, a company may offer a 5-year/50,000 mile warranty or a 3-year/36,000 mile warranty), making more warranty claims information subject to disclosure to the agency. DaimlerChrysler, for example, lengthened its engine warranty period to gain in the competitive market. *See, e.g.*, Jeff Green, DC Emphasizes Warranty, Bloomberg, Sept. 6, 2002, available at *http://www.theautochannel.com*. Not only do warranties differ by manufacturer, they also differ based on the targeted market (*e.g.* luxury v. non-luxury) and on system components and 2003 Manufacturers' Warranties, available at *www.enterprise.com*. Both items are docketed in Docket No. NHTSA–2002–12150, Item No. 65.

provide information relating to whether the release of this information would provide competitors with valuable information relating to the business of the reporting entity, such as marketing, performance problems and/or costs, to the extent that the disclosure would cause or be likely to cause the data submitter substantial competitive harm. We are also interested in whether the disclosure of the information covered by our proposed classes would significantly discourage manufacturers from continuing to obtain and manage this information as they do now.

Commenters may also address different approaches. We invite comments that address the practical concerns of such potential approaches. For example, if NHTSA were to adopt presumptive class determinations for each of the EWR data categories, what are the relative merits of each proposed class within the context of the large volume of information generated by EWR requirements, and the manner in which the agency can address the confidentiality of these materials in an efficient and consistent manner.[19]

Commenters should also, where appropriate, indicate and demonstrate how the restrictions imposed by Congress in 49 U.S.C. 30166(m)(4)(B) would affect the agency's ability to continue collecting EWR data if they are subject to routine disclosure. Supporting facts in favor or against each class should be included as appropriate.

B. EWR Class Determination Based on FOIA Exemption 6

NHTSA receives VIN information under the EWR rule in reports on incidents involving deaths and injuries. *See e.g.* 49 CFR 579.21(b)(2). NHTSA is proposing to create a class determination that would apply to the last six (6) characters of the unique seventeen (17) character vehicle identification number (VIN) contained in EWR death and injury reports. This proposal is grounded on Exemption 6 of the FOIA, which protects information that would result in a clearly unwarranted invasion of privacy if disclosed. *See* 5 U.S.C. 552(b)(6). *See also Center for Auto Safety* v. *NHTSA*, 809 F. Supp. 148 (D.D.C. 1993).

Factually, this proposed exemption is based on the risk that the disclosure of a full VIN could enable an individual to discern personal information involving a vehicle owner that could result in an unwarranted invasion of his or her privacy. With respect to EWR submissions, NHTSA had previously issued a determination that the last six (6) characters in the seventeen-character VIN should be protected, as a class, from public disclosure under FOIA Exemption 6, 5 U.S.C. 552(b)(6). 69 FR at 21416. When coupled with publicly-available data bases, the disclosure of a complete VIN can lead to the discovery of personal information (e.g., name and address) about the owner of a vehicle associated with a death or injury.[20] The first 11 characters of the VIN reveal the make, model, model year, and engine of the vehicle, but the last six identify the specific vehicle. We are concerned that release of VINs where there has been a death or an injury reported under the EWR program would result in communications and inquiries from third parties that would invade personal privacy.

Since the public can still determine a vehicle's make and model using the first 11 characters of the VIN, which would be released, members of the public with an interest in motor vehicle safety can still ascertain whether a particular type of vehicle may be involved in a potential vehicle safety issue. As discussed above, however, the revelation of the complete VIN is accompanied by the risk of an invasion of privacy. On balance, the agency tentatively believes that that interest in protecting the risk of invading individuals' privacy outweighs the public's interest in this information and the agency has tentatively concluded that this information merits withholding under FOIA Exemption 6.[21]

This new class determination would be set out in a new Appendix D, which would read as follows:

Appendix D—Vehicle Identification Number Information

The Chief Counsel has determined that the disclosure of the last six (6) characters, when disclosed along with the first eleven (11) characters, of vehicle identification numbers reported in information on incidents involving death or injury pursuant to the early warning information requirements of 49 CFR Part 579 will constitute a clearly unwarranted invasion of personal privacy within the meaning of 5 U.S.C. 552(b)(6).

This proposal would apply as a rule to only those VINs that are provided in EWR submissions and would not apply as a rule to the agency's treatment of VINs in other instances.

We seek comment on the appropriateness of our proposal, as well as variations on this proposal related to the confidentiality of all or parts of VINs.

IV. Exemption 3

In its comments in the course of the earlier EWR CBI rulemaking, and the memoranda it filed with the District Court in the *Public Citizen* case, the RMA asserted that Exemption 3 of the FOIA covered all EWR submissions, including requests for the confidentiality of EWR information not within the scope of Appendix C to Part 512 as promulgated in 2003 and amended in 2004 and individual requests for confidentiality. The District Court rejected the contention that Exemption 3 applies to the EWR data, concluding that the disclosure provision affecting EWR data, 49 U.S.C. 30166(m)(4)(C),[22] did not qualify as an Exemption 3 statute because the provision does not prescribe a formula to enable the agency to determine precisely whether the disclosure of the data would be helpful in carrying out the recall notification and remedy provisions of the Safety Act. It also noted that the provision did not refer to particular matters that must be withheld. *See Public Citizen*, 444 F. Supp. 2d at 12.

RMA filed a notice of appeal of the District Court's Judgment. The contention that NHTSA is precluded by statute from releasing the early warning data is within the scope of this notice. Should the Court of Appeals reverse the District Court on this issue and decide that Exemption 3 does apply to EWR data, the agency may proceed to issue a final rule exempting EWR data from disclosure in a manner consistent with the Court of Appeal's decision or terminate the EWR Appendix C portion of this rulemaking as unnecessary.

V. Other EWR Data

We are not proposing to include property damage claims and notices of

[19] "Binding" determinations would alleviate the need for submitters to provide a formal written request for confidentiality and supporting justification, whereas "presumptive" determinations would require submitters to provide a written request and supporting justification pursuant to 49 CFR Part 512.

[20] NHTSA has previously documented that full VINs can be used to ascertain personal information on individual vehicle owners. *See* Docket No. NHTSA–2002–12150, Item No. 64 (listing various publicly available Web sites by which VIN information can be used to reveal personal information).

[21] *See generally Horowitz* v. *Peace Corps*, 428 F.3d 271, 278–79 (D.C. Cir. 2005) (discussing balancing required under Exemption 6 and indicating that "seemingly innocuous information" can be subject to the Exemption's protection).

[22] The provision, 49 U.S.C. § 30166(m)(4)(C), provides as follows:

Disclosure. None of the information collected pursuant to the final rule promulgated under paragraph (1) [i.e. early warning reporting rule] shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.

death, personal injury or property damage as part of our class determinations based on Exemption 4. These items involve a collection of information, many pieces of which are publicly available. In the particular circumstances of these data, we do not believe that the disclosure of this collected information would likely provide information that would be used competitively and result in substantial competitive harm. These kinds of claims tend to be more historical, rather than predictive, when compared to the other types of information required by the EWR regulation, with any apparent trends arising over longer periods of time. We consider it unlikely that information about claims of death, personal injury or property damage will be valuable to competitors such as in cross-company comparisons. We note also that manufacturers receive claims based on incidents occurring in the field, not as the result of proactive efforts to obtain data or customer feedback. They are required under 49 CFR Part 576 to retain this information and do not have the option to refuse to amass it.

Therefore, other than within the context of the Exemption 3 discussion above and except to the extent that the EWR submissions contain personal information covered by Exemption 6, these data categories lie outside the scope of this rulemaking.

VI. Identifying Confidential Information Located in Electronic Files

We are also proposing to clarify NHTSA's Confidential Business Information rule, 49 CFR 512.6, regarding data claimed as confidential that are submitted in electronic form. The current regulation states requirements for paper submissions. *See* 49 CFR 512.6(a), (b)(1) and (2); *see also* 49 CFR § 512.8. It then states that if submitted in electronic format, a comparable method to of identifying the information claimed to be confidential may be used. If submitted on CD–ROM or other format, the item containing the information shall be labeled as containing confidential information. 49 CFR 512.6(c).

Some CD–ROMs that are submitted to us are not labeled or indelibly marked as confidential on the disk itself. We propose to require that the medium (e.g., the disk itself and not the plastic enclosure for the disk) be permanently labeled with the submitter's name, the subject of the information and the word ''Confidential.'' This is already the routine practice with some manufacturers. In addition, during our reviews of claims for confidential treatment, we often find that CD–ROMs do not properly designate the information that the submitters claim to be confidential. More particularly, individual files submitted electronically (e.g., pdf format) on CD–ROMs often contain documents in which each page claimed to be confidential is not labeled as confidential. Also, while a page may contain some information that is not confidential (e.g., identical information is publicly available) and some information that is within the claim for confidentiality under section 512.8, the submitter does not enclose each item of information that is claimed to be confidential within brackets. Today's proposal would require that the CD–ROM be marked permanently as confidential and that each page that contains confidential material be so marked. Also, the proposal would require that where only part of the information is within the scope of the claim, that part of the information be separately enclosed within brackets. Our proposed clarification seeks to minimize inadvertent disclosure of materials that are subject to a claim of confidentiality and eliminate any ambiguity on the scope of the claim in our review of these types of submitted documents.

During our reviews of claims for confidential treatment, we also find that files within CD–ROMs do not contain page numbers. Electronic submissions sometimes contain large numbers of files and folders. Not infrequently, these files contain numerous pages. When we deny a request for confidentiality for a particular page, we need to identify it with particularity. Individual pages within individual electronic files that lack page numbers ordinarily cannot be readily identified. In these instances, there are substantial implementation problems in identifying what page(s) are within the scope of the agency's grant of a request for confidentiality and what page(s) that are within the scope of the agency's denial. To eliminate these problems, we are proposing to add a provision requiring the inclusion of a sequential numeric or alpha-numeric system that would identify each page contained in an electronic submission. This may be added to the pages before they are scanned or in the course of the preparation of the CD–ROM. We note that the courts require page numbers in appendices. *See e.g.*, Federal Rule of Appellate Procedure 30.

The proposal also provides that electronic media may be submitted only in commonly available and used formats. This would include formats such as pdf, Word documents and Excel spreadsheets. From time-to-time, manufacturers submit information in proprietary or uncommon data bases. We have been unable to open and review these items and accordingly have denied the associated requests for confidentiality.

Finally, we would clarify that requests for confidential treatment for information submitted to the agency must provide the information claimed as confidential in a physical medium such as a CD–ROM. There have been occasions where manufacturers have attempted to submit information claimed as confidential via e-mail. Not only was this not allowed under the existing regulations, but tracking requests for confidential treatment submitted in this manner is very difficult and far more prone to error than a physical submission. This affects the agency's ability to provide timely responses to these requests and the Chief Counsel's office's ability to transmit the information to the relevant office within NHTSA. In addition, the Department of Transportation limits the overall amount of e-mail information that an individual may maintain, and this presents problems. It also creates storage issues. To ensure our ability to properly track and handle this information, our proposal would require that the information be placed on appropriate physical media, such as CDs, when requesting confidential treatment.

These changes would be included in a new § 512.6(c) which would replace § 512.6(b)(3). The proposed § 512.6(c) would read as follows:

(c) Submissions in electronic format

(1) Persons submitting information under this Part may submit the information in electronic format. Except for early warning reporting data submitted to the agency under 49 CFR part 579, the information shall be submitted in a physical medium such as a CD–ROM. The exterior of the medium (e.g., the disk itself) shall be permanently labeled with the submitter's name, the subject of the information and the word ''CONFIDENTIAL''.

(2) Pages and materials claimed to be confidential must be designated as provided in paragraphs (b)(1) and (b)(2) of this section. Files and materials that cannot be marked internally, such as video clips or executable files, shall be renamed prior to submission so the characters ''Conf'' or the word ''Confidential'' appear in the file name.

(3) Each page within an electronic file that is submitted for confidential treatment must be individually numbered in the order presented with a sequential numeric or alpha-numeric system that separately identifies each page contained in that submission.

(4) Electronic media may be submitted only in commonly available and used formats.

VII. Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the Chief Counsel (NCC–110) at the address given at the beginning of this document under the heading **FOR FURTHER INFORMATION CONTACT**: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2001–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

VIII. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

IX. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735 (Oct. 4, 1993)), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures (44 FR 11034 (Feb. 26, 1979)). This rulemaking action is not significant under E.O. 12866, ''Regulatory Planning and Review'' or the Department's regulatory policies and procedures. There are no new significant burdens on information submitters or related costs that would require the development of a full cost/benefit evaluation. As indicated in the preamble, this document proposes primarily to remedy a technical deficiency identified by a Federal court and does not raise any new legal or policy issues. This proposed rule does not present novel policy issues. Instead, it involves issues that have been subject to past notice and comment and have also been previously addressed in prior court proceedings.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would impose no

additional reporting obligations on small entities beyond those otherwise required by the Safety Act and the early warning reporting regulation. This proposed rule addresses the agency's treatment of early warning reporting data and would clarify procedures for all submitters, including small entities, with regard to confidentiality. The rule would protect certain categories of early warning reporting information from disclosure.

In addition, small entities, which generally submit items in hard copy format, are expected to and may continue to do so. Those wishing to submit information in electronic format would be able to do so using the procedures that we are clarifying in this proposal. Therefore, a regulatory flexibility analysis is not required for this proposed action.

C. National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). This action would not have ''federalism implications'' because it would not have ''substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government,'' as specified in section 1 of the Executive Order.

E. Unfunded Mandate Reform Act

The Unfunded Mandate Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposal would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

F. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

NHTSA notes that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

G. Paperwork Reduction Act

The existing requirements of Part 512 are considered to be information collection requirements as that term is defined by the Office of Budget and Management (OMB) in 5 CFR part 1320. Accordingly, the existing part 512 regulation was submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). At the time that we submitted the prior requirements of part 512, these requirements were approved through January 31, 2008. This proposal does not revise the existing currently approved information collection under part 512. Instead, the proposal contains the same requirements as before and only clarifies procedures as to electronically-submitted items to the agency for which confidentiality is sought. It does not require electronic submissions.

H. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This proposed action does not meet either of these criteria.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 512

Administrative procedure and practice, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and record keeping requirements.

In consideration of the foregoing, the National Highway Traffic Safety Administration proposes to amend 49 CFR Chapter V, Code of Federal Regulations, by amending part 512 as set forth below.

PART 512—CONFIDENTIAL BUSINESS INFORMATION

1. The authority citation for part 512 continues to read as follows:

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166, 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

2. Section 512.6 is amended by removing paragraph (b)(3) and adding a new paragraph (c) to read as follows:

§ 512.6 How should I prepare documents when submitting a claim for confidentiality?

* * * * *

(c) *Submissions in electronic format.* (1) Persons submitting information under this Part may submit the information in electronic format. Except for early warning reporting data submitted to the agency under 49 CFR part 579, the information shall be submitted in a physical medium such as a CD–ROM. The exterior of the medium (*e.g.*, the disk itself) shall be permanently labeled with the submitter's name, the subject of the information and the word ''Confidential''.

(2) Pages and materials claimed to be confidential must be designated as provided in paragraphs (b)(1) and (b)(2) of this section. Files and materials that cannot be marked internally, such as video clips or executable files, shall be renamed prior to submission so the characters ''Conf'' or the word ''Confidential'' appear in the file name.

(3) Each page within an electronic file that is submitted for confidential treatment must be individually numbered in the order presented with a sequential numeric or alpha-numeric system that separately identifies each page contained in that submission.

(4) Electronic media may be submitted only in commonly available and used formats.

* * * * *

3. Appendix C to part 512 is revised to read as follows:

Appendix C to Part 512—Early Warning Reporting Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR part 579, subpart C, will cause substantial competitive harm and will impair the government's ability to obtain this information in the future if released:

(1) Reports and data relating to warranty claim information;

(2) Reports and data relating to field reports, including dealer reports, product evaluation reports, and hard copies of field reports; and

(3) Reports and data relating to consumer complaints.

(b) In addition, the Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm if released:

(1) Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles, as defined in 49 CFR § 579.4(c); and

(2) Lists of common green tire identifiers.

4. Appendix D to part 512 is redesignated as Appendix E to part 512 and a new Appendix D to part 512 is added to read as follows:

Appendix D to Part 512—Vehicle Identification Number Information

The Chief Counsel has determined that the disclosure of the last six (6) characters, when disclosed along with the first eleven (11) characters, of vehicle identification numbers reported in information on incidents involving death or injury pursuant to the early warning information requirements of 49 CFR part 579 will constitute a clearly unwarranted invasion of personal privacy within the meaning of 5 U.S.C. 552(b)(6).

Issued on: October 26, 2006.

Anthony M. Cooke,

Chief Counsel.

[FR Doc. E6–18285 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102006A]

New England and Mid-Atlantic Fishery Management Councils; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The New England and Mid-Atlantic Fishery Management Councils (Councils) will convene public hearings and seek public comment on a draft amendment to all the fishery management plans (FMPs) under their purview. The omnibus amendment would establish standardized bycatch reporting methodology (SBRM) for each FMP, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The public hearings will be on November 14, 2006, in Gloucester, MA, and December 12, 2006, in New York City, NY. Written comments must be received at the appropriate address, e-mail address, or fax number (see **ADDRESSES**) by 5 p.m., local time, on December 29, 2006.

ADDRESSES: NMFS and the Councils will accept comments at two public hearings. For specific locations, see **SUPPLEMENTARY INFORMATION**. You may submit comments on the draft amendment by any of the following methods:

- E-mail: *SBRMcomment@noaa.gov*
- Through the Federal eRulemaking portal: *http://www.regulations.gov*. Reference I.D. 102006A.
- Mail: Patricia A. Kurkul, Regional Administrator, NOAA Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester MA 01930. Mark the outside of the envelope: ''Comments on SBRM Amendment.''
- Fax: (978) 281–9135, Attention: Patricia A. Kurkul.

Copies of the draft SBRM amendment and the public hearing document may be obtained by contacting the NMFS Northeast Regional Office at the above address. The documents are also available via the internet at: *http://www.nero.noaa.gov/nero/regs/com.html*.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, (978) 281–6283.

SUPPLEMENTARY INFORMATION: Section 303(a)(11) of the Magnuson-Stevens Act requires each FMP to include provisions establishing ''a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.'' The Councils and NMFS are considering an omnibus amendment to establish an SBRM or modify existing SBRMs under every Northeast Region FMP. The purpose of the amendment is to explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries, to determine whether these methods and processes need to be modified and/or supplemented, to establish standards of precision for bycatch estimation for all Northeast Region fisheries and, thereby, to document the SBRM established for all fisheries managed through the FMPs of the Northeast Region. The scope of the omnibus amendment is limited to those fisheries prosecuted in the Federal waters of the Northeast Region and managed through an FMP developed by either the Mid-Atlantic or New England Council.

Alternatives under consideration in the omnibus SBRM amendment address bycatch reporting and monitoring mechanisms, analytical techniques and allocation of at-sea fishery observers, establishment of a target level for precision of bycatch estimates, and requirements for reviewing and reporting on the efficacy of the SBRM. NMFS and the Councils will consider all comments received on the draft SBRM amendment and the alternatives for incorporation into the final document until the end of the comment period on December 29, 2006. The public will have several additional opportunities to comment on the SBRM. The final amendment will be considered for approval by the Councils at public meetings in February of 2007. Once submitted to NMFS, the final SBRM Amendment will be made available for public review and comment, and regulations will be proposed for review and comment in March 2007.

Meeting Dates, Times, and Locations

The public hearings have been scheduled to coincide with the date and location of New England and Mid-Atlantic Fishery Management Council meetings.

Tuesday, November 14, 2006, at 5:30 p.m. – Tavern on the Harbor, 30 Western Ave., Gloucester, MA 01930, telephone: (978) 283–4200.

Tuesday, December 12, 2006, at 7 p.m. – Skyline Hotel, 725 10th Ave, New York, NY 10019, telephone: (212) 586–3400.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids at the Gloucester, MA, meeting should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Requests for such services at the New York, NY, meeting should be directed to M. Jan Saunders, (302) 674 2331 extension 18. Requests for accessibility accommodations must be received at

least at least 5 days prior to the meeting dates.

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

Dated: October 25, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–18286 Filed 10–30–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 71, No. 210

Tuesday, October 31, 2006

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

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee meeting that had been set for November 8, 2006 has been cancelled. The new date that the Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet is Tuesday, December 12, 2006 at the Okanogan and Wenatchee National Forests Headquarters office, 215 Melody Lane, Wenatchee, WA. This meeting will begin at 9:30 a.m. and continue until 4 p.m. During this meeting Provincial Advisory Committee members will continue the collaboration process on forest plan issues relating to the preparation of a revised forest plan for the Okanogan and Wenatchee National Forests. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–664–9200.

Dated: October 25, 2006.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 06–8976 Filed 10–30–06; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting; Public Meeting: Combustible Dust Hazards

AGENCY: U.S. Chemical Safety and Hazard Investigation Board (CSB).

ACTION: Notice announcing Sunshine Act public meeting and requesting public comment and participation.

SUMMARY: The CSB is planning to hold a public meeting to share findings and recommendations of the draft combustible dust hazards investigation report. This notice provides information regarding the purpose, date, time, location and format for the public meeting.

DATES: The Public Meeting will be held on Thursday, November 9, 2006 beginning at 9:30 a.m. in the Diplomat/Consulate Room, Embassy Suites Downtown Washington, 1250 22nd St., NW., Washington, DC 20037. Meeting will end at 12:30 p.m.

Pre-registration: The event is open to the public and there is no fee for attendance or pre-registration required. However, attendees are strongly encouraged to pre-register by e-mailing your name and affiliation by November 2, 2006 to *dust@csb.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Horowitz, Ph.D, Office of Congressional, Public, and Board Affairs, (202) 261–7613 or e-mail *dust@csb.gov.* Detailed information on the meeting agenda will be posted soon at *http://www.csb.gov.*

SUPPLEMENTARY INFORMATION:

A. Background.
B. CSB Hazard Investigation Study.
C. Board presentation.

A. Background

In 2003 the CSB investigated 3 combustible dust explosions. A total of 14 individuals were killed and 81 injured in these events. In January 2003, an explosion and fire at the West Pharmaceutical Services facility in Kinston, North Carolina resulted in the deaths of six workers and injuries to 38 others. CSB investigated this accident and concluded that the explosion was the result of the deflagration of polyethylene powder that had accumulated above a suspended ceiling in the processing area of the facility. In February 2003, a combustible dust explosion occurred at the CTA Acoustics facility in Corbin, Kentucky, killing 7 workers and injuring 37. CSB found that the fuel for the explosion was phenolic resin used to produce insulation materials for the automotive industry. The explosion began near a curing oven, where routine cleaning lofted accumulated resin dust that was ignited by fire in an oven on which the doors were left open. Numerous secondary deflagrations caused damage and injuries throughout the facility. The third incident occurred in October 2003 where one worker was killed and six others injured by an aluminum dust explosion at Hayes Lemmerz International in Huntington, Indiana. The occurrence of three fatal combustible dust explosions within one calendar year prompted the Board to commence a broader study of the extent, nature and prevention of combustible dust fire and explosion hazards.

B. CSB Hazard Investigation Study

The objectives of CSB's dust study investigation include:

1. Determining the number and effects of combustible dust fires and explosions in the United States during the twenty five year period beginning in 1980. CSB is excluding the following types of incidents for the purposes of this study:

(a) Those occurring in grain-handling or other facilities that are currently regulated by OSHA's grain handling standard.

(b) Those occurring in coal mines or other facilities covered by MSHA regulations. Incidents involving coal dust at power generation plants and other facilities not covered by MSHA regulations are not excluded.

(c) Incidents occurring in non-manufacturing facilities such as hospitals, military installations and research institutes.

(d) Incidents involving transportation or transportation vehicles.

(e) Incidents occurring outside the United States or U.S. territories.

2. Evaluating the extent and effectiveness of efforts by state and local officials to prevent combustible dust fires and explosions.

3. Evaluating the effectiveness of existing hazard communication programs and regulations in making facility managers and workers aware of the fire and explosion hazards of combustible dusts.

4. Determining what additional state, federal or private sector activities may be necessary to prevent future incidents.

C. Board Presentation

At the public meeting CSB staff will present to the Board the results of their investigation, including a discussion of the key findings and draft recommendations. After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or recommendations should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 06–9010 Filed 10–27–06; 1:37 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

List of Petitions Received by EDA for Certification of Eligibility To Apply for Trade Adjustment Assistance for the Period October 1, 2006 Through October 20, 2006

Firm	Address	Date petition accepted	Product
Windo-Therm LLC	90 Church Street, Hoosick Falls, NY 12090.	10/3/06	Window and door coverings.
TechFlex Packaging, LLC	12624 Daphne Avenue, Hawthorne, CA 90250.	10/5/06	Pre-made flexible barrier pouches and bags.
Adaptive Technologies, Inc	1910 E. Karcher Road, Nampa, Idaho 83687.	10/5/06	Molded plastic products such as casings and housings.
Wall Industries, Inc	5 Watson Brook Road, Exeter, New Hampshire 03833.	10/6/06	Power conversion products with an emphasis on modified standard and customized power solutions.
Euclid Industries, Inc	1655 Tech Drive, Bay City, MI 48706	10/12/06	Precision metal machined products for the automotive industry.
Doyle Enterprises, Inc	4330 Truevine Road, Rocky Mount, VA 24151.	10/12/06	Private label fleece sportsware.
HQC Incorporated	230 Kendall Point Drive, Oswego, IL 60543.	10/16/06	Plastic injected components for large and small Original Equipment Manufacturers requiring close tolerance molding.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 24, 2006.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E6–18275 Filed 10–30–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests

to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2002), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2007.

Antidumping duty proceedings	Period to be reviewed
Latvia: Steel Concrete Reinforcing Bars, A–449–804.	9/1/05–8/31/06
Joint Stock Company Liepajas Metalurgs.	
Republic of Korea: Stainless Steel Wire Rod, A–580–829.	9/1/05–8/31/06
Changwon Specialty Steel Co., Ltd.	
Dongbang Specialty Steel Co., Ltd.	
Republic of Korea: Steel Concrete Reinforcing Bars, A–580–844.	9/1/05–8/31/06
Dongkuk Steel Mill Co., Ltd.	
Hwanyoung Steel Industries Co., Ltd.	
Korea Iron and Steel Co., Ltd.	
Sweden: Stainless Steel Wire Rod, A–401–806.	9/1/05–8/31/06
Fagersta Stainless AB.	
The People's Republic of China: Freshwater Crawfish Tail Meat [1], A–570–848.	9/1/05–8/31/06
Anhui Tongxin Aquatic Product & Food Co., Ltd.	
China Kingdom Import & Export Co., Ltd.	
aka China Kingdoma Import & Export Co., Ltd.	
aka Zhongda Import & Export Co., Ltd.	
Fujian Pelagic Fishery Group Co.	
Huoshan New Three-Gold Food Trade Co., Ltd.	
Leping Lotai Foods Co., Ltd.	
Nanjing Merry Trading Co., Ltd.	
Qingdao Jinyongxiang Aquatic Foods Co., Ltd.	
Qingdao Wentai Trading Co., Ltd.	
Shanghai Strong International Trading Co., Ltd.	
Weishan Hongrun Aquatic Food Co., Ltd.	
Weishan Zhenyu Foodstuff Co., Ltd.	
Xiping Opeck Food Co., Ltd.	
Xuzhou Jinjiang Foodstuffs Co., Ltd.	
Yancheng Hi-King Agriculture Developing Co., Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements.	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part. Additionally, for those companies for which we are conducting a new shipper review, this administrative review will only cover entries not covered by those new shipper reviews.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(I).

Dated: October 25, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–18291 Filed 10–30–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102306A]

Vessel Monitoring Systems; Announcement of the Enhanced Mobile Transmitter Unit Reimbursement Program for the Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Notice.

SUMMARY: NMFS announces the availability of grant funds for vessel owners and/or operators who have purchased an Enhanced Mobile Transmitter Unit (E–MTU) to comply with fishery regulations requiring the use of Vessel Monitoring Systems (VMS) in the Reef Fish Fishery of the Gulf of Mexico. These funds will be used to reimburse vessel owners and/or operators for the purchase price of the E–MTU.

FOR FURTHER INFORMATION CONTACT: For current listing information, questions regarding VMS installation or activation checklists, contact the VMS Support Center, NOAA Fisheries Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910, phone 888–219–9228, fax 301–427–0049.

For questions regarding E–MTU type approval or information regarding the status of VMS systems being evaluated by NOAA for approval, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300; fax 301–427–2055.

For questions regarding reimbursement applications contact Randy Fisher, Executive Director, Pacific States Marine Fisheries Commission (PSMFC), 205 SE Spokane Street, Suite 100, Portland, OR 97202, phone 503–595–3100, fax 503–595–3232.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

This reimbursement opportunity is available to fishing vessel owners and/or operators that have purchased an approved E–MTU device in order to comply with fishery regulations developed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94–265). Only those vessel owners and/or operators purchasing an E–MTU for compliance with fishery management regulations applicable to the Reef Fish Fishery of the Gulf of Mexico are eligible for this funding opportunity. The reimbursable expense is the purchase price of the least expensive E–MTU type-approved for the Reef Fish Fishery of the Gulf of Mexico for which the owner and/or operator holds a valid commercial fishing permit.

II. Eligibility

To be eligible to receive reimbursement, vessel owners and/or operators must first purchase an E–MTU type-approved for in the Reef Fish Fishery of the Gulf of Mexico for which the vessel owner and/or operator holds a valid commercial fishing permit. The vessel owner and/or operator must also have the E–MTU properly installed on the vessel and activated utilizing a type-approved communications provider. Upon completion of the installation and activation process, the vessel owner and/or operator must contact the VMS Support Center by calling 888–219–9228 to ensure the vessel is properly registered in the VMS system. OLE does not consider a vessel in compliance until the E–MTU signal has been received and processed by OLE.

Vessel owners and/or operators must not be in arrears with a payment owed to the Agency for a civil monetary penalty. However, affected vessel owners and/or operators may become eligible for the reimbursement if the outstanding penalty is paid in full within 30 days of the denial of the reimbursement. After payment, vessel owners and/or operators must contact the VMS Support Center and provide documentation to support the defrayment of the penalty to receive a confirmation code for reimbursement purposes.

III. Process

Vessel owners and/or operators that have purchased an E–MTU, and have validated their compliance with the applicable regulations through OLE, may contact the PSMFC, 205 SE Spokane Street, Suite 100, Portland, OR 97202, phone 503–595–3100, fax 503–595–3232, for a reimbursement application. Once the application is received and completed by the vessel owner and/or operator, it must be returned to PSMFC along with proof of eligibility in order to qualify for an award. The required proof of eligibility must include: proof of a valid commercial fishing permit for the Reef Fish Fishery of the Gulf of Mexico; proof of purchase and the purchase price of a type-approved E–MTU; and a valid compliance confirmation code issued by OLE.

Vessel owners and/or operators are not restricted as to which type-approved E–MTU device they can purchase. However, the amount of the reimbursement will be limited to the cost of the least expensive E–MTU type-approved for the permitted fishery. Vessel owners and/or operators are encouraged to compare the features of all E–MTU devices type-approved for the Reef Fish Fishery of the Gulf of Mexico and explore finance options prior to making a purchase decision. Vessel owners/operators are limited to the reimbursement of the cost of purchasing E–MTU per permitted vessel.

Dated: October 26, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 06–8980 Filed 10–26–06; 2:50 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Missile Defense Agency, the Defense Field Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATES: October 27, 2006.

FOR FURTHER INFORMATION CONTACT: Sandra Burrell, Executive and Political Personnel Division, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 693–8347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective October 27, 2006.

Office of the Secretary of Defense

Chairperson: Nancy Spruill

Robert Nemetz, Mike Kern, Mary George, Cheryl Roby, Robert Newberry, David Pauling, William Lowry, Anne O'Connor, Thomas Kuster, Paul Koffsky, Joseph Nogueira, Frank Anderson, Joseph Angello, David Epstein, Eric Coulter, Jeanne Fites, Dennis Clem, Ellen Embrey, James Russell, Joyce France, Jennifer Buck, Tom Lavery, Bruce Bade, Ken Handelman, Alan Liotta, Bob Salesses, Todd Harvey.

Dated: October 24, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8970 Filed 10–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability and Notice of Public Hearing of the Draft Environmental Impact Statement for an Annex to the Fort Rosecrans National Cemetery at Marine Corps Air Station Miramar, San Diego, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability and public meeting.

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy (DON), Marine Corps Air Station Miramar (MCAS Miramar), and Department of Veterans Affairs (VA) announce the availability of the Draft Environmental

Impact Statement (DEIS) that evaluates the potential environmental effects of the land use agreement between the DON and the VA National Cemetery Administration (NCA) for the proposed annex to the existing Fort Rosecrans National Cemetery at Point Loma in San Diego, CA. The DEIS also evaluates the potential effects of construction and operation of the proposed cemetery annex. The annex would be located at MCAS Miramar, in San Diego, CA.

The purpose of the proposed action is to provide needed burial space on federal land for military veterans in the San Diego area. The DEIS addresses the proposed site (Site 2), one on-site development alternative (Site 4), and the No Action Alternative.

The DEIS evaluates the potential environmental effects associated with each of the alternatives. Issues addressed in the DEIS include land use, socioeconomics/environmental justice, utilities, public services, visual resources, cultural resources, biological resources, soils and geology, water resources, public health and safety, traffic/circulation, air quality, and noise. Impact analyses include an evaluation of direct, indirect, short-term, and cumulative impacts.

DATES: All written comments must be received on or before December 11, 2006. A public meeting will be held on Thursday, November 16, 2006, from 6 p.m. to 8 p.m. at the Holiday Inn Select Miramar, 9335 Kearny Mesa Road, San Diego, CA.

ADDRESSES: Written comments should be directed to: Ms. Hiphil S. Clemente (Code OPCE.HC), Naval Facilities Engineering Command, Southwest, 1220 Pacific Highway, San Diego, CA 92132.

FOR FURTHER INFORMATION CONTACT: Ms. Hiphil S. Clemente, Naval Facilities Engineering Command, Southwest at telephone 619–532–3781, fax 619–532–4160, or e-mail: *hiphil.clemente@navy.mil.*

SUPPLEMENTARY INFORMATION: The VA operates the Fort Rosecrans National Cemetery, located on the Point Loma Submarine Base. It is the only national cemetery in San Diego County and has been closed to casketed burials since 1966. It is scheduled to be closed to cremated remains burials by 2008 and has no additional land available for expansion. The NCA has identified a need for additional burial space option for 253,000 San Diego-area eligible military veterans for the next 20 to 30 years.

A Notice of Intent to prepare the DEIS was published in the **Federal Register** on October 4, 2005. A public scoping meeting was held on November 2, 2005, at the Holiday Inn Select located at 9335 Kearney Villa Road in San Diego, CA.

The DEIS addresses the proposed site (Site 2), one on-site development alternative (Site 4), and the No Action Alternative. The Site 2 Alternative is located in the northwestern corner of MCAS Miramar. This site is approximately 323 acres and has access to Miramar Road to the north and Nobel Drive to the northwest. The site is bounded by Miramar Road to the north, the commuter/freight railway to the south and east, and the western boundary of MCAS Miramar to the west. The Site 4 Alternative is located in the south-central portion of MCAS Miramar in the former Camp Elliott area and is approximately 175 acres. The site is completely surrounded by freeways with State Route 163 to the west, State Route 52 to the south, and Interstate 15 to the east. Kearny Villa Road traverses the site in a north-south direction. The DEIS identifies the Site 2 Alternative as the Preferred Alternative.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and interested parties. The DEIS is also available for public review at the following local libraries:

Scripps Miramar Ranch Library, 10301 Scripps Lake Drive, San Diego, CA.

Mira Mesa Branch Library, 8405 New Salem Drive, San Diego, CA.

San Diego Central Library, 820 E Street, San Diego, CA.

The public review period begins with the publication of this Notice of Availability and ends 45 days after. All comments must be received on or before December 11, 2006. A public meeting will be held on Thursday, November 16, 2006, from 6 p.m. to 8 p.m. at the Holiday Inn Select Miramar, 9335 Kearny Mesa Road, San Diego, California. The public meeting will follow an informal open house format. The public is invited to attend the meeting at their convenience during the meeting hours and can view project-related displays and speak with DON and VA representatives. A court reporter will be available at the meeting to accept oral comments.

Dated: October 26, 2006.

Lynette M. Breutzman,

Paralegal Specialist, Judge Advocate General's Office, Alternate Federal Register Liaison Officer.

[FR Doc. E6–18248 Filed 10–30–06; 8:45 am]

BILLING CODE 3810–FF–P

ELECTION ASSISTANCE COMMISSION

Information Collection Activity; Proposed Information Collection; Comment Request

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: 30-Day Notice of Information Collection Under Review.

SUMMARY: The U.S. Election Assistance Commission has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 1, 2006, at 71 FR 43477. The notice allowed for a 60-day public comment period. Fourteen comments were received on this information collection, and modifications were made to improve and clarify the information collection based on those comments. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 27, 2006. This process is conducted in accordance with 5 CFR 1320.10. 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 of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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: Written comments must be submitted on or before November 27, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

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 above address or call Mrs. Juliet Thompson-Hodgkins or Ms. Laiza N. Otero at (202) 566–3100.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: 2006 Election Administration and Voting Survey; OMB Number Pending.

Needs and Uses: This proposed information collection activity is necessary to meet requirements of the Help America Vote Act (HAV) of 2002 (42 U.S.C. 15301). Section 241 of HAVA requires the EAC to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, HAVA transferred to the EAC the Federal Election Commission's responsibility of biennially administering a survey on the impact of the National Voter Registration Act (NVRA). The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations (Chapter 1, Part 8, Subchapter C). HAVA § 703(a) also amended the Uniformed and Overseas Citizens Absentee Voters Act by requiring that ''not later than 90 days after the date of each regularly scheduled general election of Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help American Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public.'' In order to fulfill these requirements and to provide a complete report to Congress, the EAC is seeking information relating to the period from the close of registration for the November 2, 2004, Federal general election until the close of registration for the November 7, 2006, Federal general election, and information from the November 7, 2006, Federal general election.

Affected Public: State government.

Number of Respondents: 55.

Responses per Respondent: 1.

Estimated Burden Per Response: 115.07 hours.

Estimated Total Annual Burden Hours: 6,328.85 hours.

Frequency: Biennially.

Thomas R. Wilkes,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 06–8967 Filed 10–30–06; 8:45 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Office of Science; Climate Change Science Program Product Development Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Climate Change Science Program Product Development Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 15, 2006, 1 p.m. to 4 p.m.

ADDRESSES: Room 109, Keck Center of the National Academies, 500 Fifth St., NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Anjuli S. Bamzai (301–903–0294; *anjuli.bamzai@science.doe.gov*) Designated Federal Officer, Climate Change Science Program Product Development Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, Climate Change Research Division, SC–23.3/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/cpdac/announcement.html.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To continue discussions on drafting the Climate Change Science Program (CCSP) Synthesis and Assessment Product related to scenarios of greenhouse gas emissions and concentrations, and development and application of integrated scenarios of greenhouse gas emissions. This activity is being conducted at the request of the Department of Energy, in accordance with the CCSP Guidelines for Producing the CCSP Synthesis and Assessment Products.

Tentative Agenda Items:

Wednesday, November 15, 1 p.m.–4 p.m:

- Presentation on 2.1a and 2.1b to resolve issues raised by both the public review and the CPDAC committee at the August 17–18 CPDAC meeting.
- Response that the 2.1a and 2.1b author team has made to address these items.
- Discussion by the CPDAC to decide whether the revisions on 2.1a and 2.1b are adequate and meet their approval.
- List of changes for 2.1a and 2.1b, if any, for final concurrence by CPDAC.
- Public comment (10 minute rule).

Public Participation: The half day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Anjuli Bamzai at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 26, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–18267 Filed 10–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 14, 2006—8 a.m.–5 p.m. Wednesday, November 15, 2006—8 a.m.–2 p.m.

Opportunities for public participation will be held Tuesday, November 14, 2006, from 1 to 1:15 p.m. and 4 to 4:15 p.m.; and Wednesday, November 15, 2006, from 9 to 9:15 a.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Shannon A. Brennan, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1216, Idaho Falls, ID 83415. Phone (208) 526–3993; Fax (208) 526–1926 or e-mail: *Shannon.Brennan@nuclear.energy.gov* or visit the Board's Internet home page at: *http://www.inelemcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Shannon A. Brennan for the most current agenda):

Groundwater Monitoring Update;

- Experimental Test Reactor (ETR) Engineering Evaluation/Cost Analysis (EE/CA);
- Tank Farm Update;
- Disposition of Legacy Spent Nuclear Fuel.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Shannon A. Brennan at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Shannon A. Brennan, Federal Coordinator, at the address and phone number listed above.

Issued at Washington, DC, on October 26, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–18268 Filed 10–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 16, 2006, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

5:30 p.m.—Informal Discussion 6 p.m.—Call to Order

Introductions

Review of Agenda

Approval of October Minutes

6:15 p.m.—Deputy Designated Federal Officer's Comments

6:35 p.m.—Federal Coordinator's Comments

6:40 p.m.—Liaisons' Comments

6:50 p.m.—Public Comments and Questions

7 p.m.—Task Forces/Presentations

- C–746–U Landfill Groundwater Assessment
- Site Management Plan
- Water Disposition/Water Quality Task Force

8 p.m.—Review of Action Items

8:05 p.m.—Public Comments and Questions

8:15 p.m.—Break

8:25 p.m.—Administrative Issues

- Budget Review
- Review of Work Plan
- Review of Next Agenda

8:35 p.m.—Subcommittee Report

- Executive Committee—Retreat Review

8:50 p.m.—Final Comments

9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to Reinhard Knerr, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6825.

Issued at Washington, DC on October 26, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–18272 Filed 10–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

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

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: November 30, 2006, from 2 p.m. to 3 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Assistant Manager, Intergovernmental Projects & Outreach, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Update members on routine business matters and discuss revisions to the STEAB Annual Report.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business.

Notes: The notes of the teleconference will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The notes will also be made available for downloading on the STEAB Web site, *www.steab.org*, within 60 days.

Issued at Washington, DC, on October 26, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–18271 Filed 10–30–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8236–3]

Announcement of the Board of Trustees for the National Environmental Education and Training Foundation, Inc

Summary: The National Environmental Education and Training Foundation was created by Section 10 of Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501 (c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation supports a grant program that promotes innovative environmental education and training programs; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education and Training Foundation, Inc. Board of Trustees. The appointees are Philippe Cousteau, Co-Founder and Chief Executive Officer of EarthEcho International and Trish Silber, President, Aliniad Consulting Partners, Inc. The appointees will join the current Board members which include: J.L. Armstrong, National Manager, Diversity Development, Toyota Motor Sales, USA

- Raymond Ban, Executive Vice President, Meteorology Science and Strategy, The Weather Channel, Inc.
- Holly Cannon, Principal of the Law Firm Beveridge&Diamond.
- Arthur Gibson, Vice President, Environment, Health&Safety, The Home Depot, Inc.
- Dorothy McSweeny, (NEETF Vice Chair), Chair, DC Commission on the Arts and Humanities.
- Honorable William Sessions, former Director of the Federal Bureau of Investigation.
- Bradley Smith, Dean, Huxley College of the Environment, Western Washington University.
- Kenneth Strassner, Vice President, Global Environment, Safety, Regulatory and Scientific Affairs, Kimberly-Clark Corporation.

Additional Considerations: Great care has been taken to assure that these new appointees not only have the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education and training. This appointment shall be for two consecutive four year terms.

FOR FURTHER INFORMATION CONTACT: C. Michael Baker, Acting Director, Environmental Education Division, Office of Children's Health Protection and Environmental Education (1704A) U.S. EPA 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Dated: October 19, 2006.

Stephen L. Johnson,

Administrator.

BIOS of New Members

Philippe Cousteau

Co-Founder and Chief Executive Officer Earthecho International

Philippe Cousteau and his sister Alexander are the third generation of Cousteau to dedicate their lives to exploring and explaining the natural world. Philippe continue the work of his late father, Philippe Sr., and grandfather, Jacques-Yves, by working to unite the pursuit of science, the conservation of nature, and the education of a public eager to learn about the world around us. He founded EarthEcho International with his sister and his mother, Jan Cousteau, to work towards these goals, with a particular focus on young people as the future caretakers of the planet. He serves as President of EarthEcho and is responsible for directing and managing its extensive worldwide operations.

Philippe has performed scholarly field research in Papua new Guinea with Dr. Eugenie Clark and in Bonaire in the Antilles with George Buckley. He has authored articles for numerous magazines, including National Geographic, Sport Diver Magazine, Dive Trade International, Capture Life, and Caribbean Adventure, among others. He has lectured at Harvard University, Miami Dade College, Truckee College

and numerous other institutions, and has appeared on television and radio programs for his expertise. He has written, directed, and produced public service announcements and documentary films, and is President and Founder of Thalassa Ventures Corporation, a media development and consulting company. Philippe also serves on the Board of Directors of the Blue Frontier Foundation, the Honorary Board of the Everglades Foundation, the Advisory Board for the Global Peace Film Festival, the Advisory Board for the Algalita Marine Research Foundation, the Advisory Council for the Ocean Energy Council and the Advisory Council for the Smithsonian Institution's Ocean Science Initiative. He is not affiliated with the Cousteau Society.

Trish Silber

President, Aliniad Consulting Partners, Inc

Trish Silber is president of Aliniad Consulting Partners, Inc., a Washington D.C.-based consulting firm focused on leadership, team, and organization development. She works with a select group of clients in three key areas:

- Coaching executives (groups and individuals).
- Leading strategic planning, culture exchange, and/or organization redesign efforts.
- Designing and leading corporate learning in the areas of leadership, productive reasoning and communication skills.

Trish has 20 years of experience working with organizations facing rapid changes in technology markets, strategy, and leadership. As a result, she is able to quickly build a candid and trusting coaching context within which executives can address their most critical challenges. Clients report that she provides potent consulting that is flexible in methodology, practical in application, and judicious in use of time.

Organizations frequently contact Trish to facilitate groups facing high-risk and contentious situations, particularly when multiple stakeholders are involved, such as competing business unites or community groups. She helps groups convert seemingly intractable conflicts into productive conversations, from which high quality, timely and actionable decisions are made. Prior to forming Aliniad, Trish was a senior partner with Catalyst Consulting Team Inc., a national consulting firm known for its work in strategic alignment, leadership development, and experiential learning. Trish was with Catalyst for 14 years, and served on its Board of Directors from 1996 through 2002. Prior to joining Catalyst, she held several internal human resources positions at Apple Computer. She earned a masters degree in business from the University of Santa Clara, a bachelor's degree in behavioral psychology from Connecticut College, and has done graduate work in organizational behavior at George Washington University. She has completed numerous certificate programs in the fields of human resources, organizational development, and coaching. For example, she is certified as an advanced mediator through the Center for Dispute Settlement, and in coaching through Newfield Network's CPPM and graduate programs. Trish is also a member of the faculty for George Washington University's graduate program on leadership coaching.

[FR Doc. E6–18262 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8235–9]

Proposed Agreement and Covenant Not to Sue for Empire Canyon Site, Park City, UT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* (''CERCLA''), notice is hereby given of the proposed Agreement between the U.S. Environmental Protection Agency (''EPA'') and DV Luxury Resort, LLC. (''Settling Respondent'').

The proposed Agreement relates to Settling Respondent's plan to build a resort hotel and condominium project at the Empire Canyon Site located in Park City, Summit County, Utah (the ''Site''). Settling Respondent is not a Potentially Responsible Party at the Site. Settling Respondent proposes to lease the Site from United Park City Mines, a Potentially Responsible Party that in 2003 entered into an Administrative Order on Consent with EPA for cleaning up historic mine waste at the Site. Pursuant to the proposed Agreement, the Settling Respondent would undertake additional cleanup at the Site appropriate so that the Site may be used for recreational purposes.

The Settling Respondent has agreed to pay $38,000 to EPA in exchange for a covenant by EPA not to sue the Settling Respondent for certain response costs that may result from transporting mine wastes to the Richardson Flat Site for disposal. These funds will be deposited into the Special Account for the Richardson Flat Site. The Settling Respondent also agrees to pay EPA's oversight costs under this Agreement.

DATES: For thirty (30) days following the date of publication of this Notice, EPA will receive written comments relating to the above referenced Agreement. EPA will consider all comments received and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations that indicate that modification or withdrawal would be appropriate.

ADDRESSES: EPA's response to any comments, the proposed agreement and additional background information relating to the agreement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, Suite 300, 5th Floor, in Denver, Colorado. Comments and requests for copies of the proposed Agreement should be addressed to Maureen O'Reilly, Enforcement Specialist, Environmental Protection Agency–Region 8, Mail Code 8ENF–RC, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Empire Canyon Site, Park City, Summit County Utah.

FOR FURTHER INFORMATION CONTACT: Margaret J. (''Peggy'') Livingston, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency-Region 8, Mail Code 8ENF–L, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6858.

Dated: October 18, 2006.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. E6–18294 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8236–1]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of EPA's final action

identifying water quality limited segments and associated pollutants in Arkansas to be listed pursuant to Clean Water Act (CWA) Section 303(d), and request for public comment. Section 303(d) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On October 16, 2006, EPA partially approved and partially disapproved Arkansas' 2004 303(d) submittal. Specifically, EPA approved Arkansas' listing of 271 water body-pollutant combinations, and associated priority rankings and deferred its action on 129 water body pollutant combinations until the State submits its formal 2006 303(d) list. EPA disapproved Arkansas' decisions not to list 5 water body-pollutant combinations. EPA identified these additional water body pollutant-combinations along with priority rankings for inclusion on the 2004 Section 303(d) List.

EPA is providing the public the opportunity to review its final decisions to add water body pollutant-combinations to Arkansas' 2004 Section 303(d) List, as required by EPA's Public Participation regulations (40 CFR Part 25). EPA will consider public comments and if necessary amend its final action on the additional water body pollutant-combinations identified for inclusion on Arkansas' Final 2004 Section 303(d) List.

DATES: Comments must be submitted in writing to EPA on or before November 30, 2006.

ADDRESSES: Comments on the decisions should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–7373, or e-mail: *smith.diane@epa.gov*. Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decisions and a list of the 5 water quality limited segments for which EPA disapproved Arkansas' decision not to list can be obtained at EPA Region 6's Web site at *www.epa.gov/earth1r6/6wq/tmdl.htm*, or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Arkansas submitted to EPA its listing decisions under Section 303(d) on May 20, 2004 with subsequent revisions submitted on August 17, 2004, November 12, 2004, July 20, 2005, and October 11, 2005. On October 16, 2006, EPA approved Arkansas' listing of 271 water body-pollutant combinations and associated priority rankings and deferred action on 129 water body-pollutant combinations. EPA disapproved Arkansas' decision not to list 5 water body-pollutant combinations and associated priority rankings. EPA identified these additional water body-pollutant combinations along with priority rankings for inclusion on the 2004 Section 303(d) List. EPA solicits public comment on its identification of 5 additional water body-pollutant combinations for inclusion on Arkansas' 2004 Section 303(d) List.

Dated: October 20, 2006.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. E6–18263 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting Notice

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Thursday, November 2, 2006, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendment to Part 308 Increasing Fees for Late Assessment Penalties.

Memorandum re: Economic Conditions and Emerging Risks in banking.

Discussion Agenda

Memorandum and resolution re: Final Rule Setting the designated Reserve Ratio.

Memorandum and resolution re: Final Part 327—Operational Processes Governing the FDIC's Deposit Insurance Assessment System.

Memorandum and resolution re: Final Rule on Risk-Based Assessments.

Memorandum and resolution re: Final Rule Regarding the Official FDIC Sign and Advertising of FDIC Membership.

Memorandum and resolution re: Establishment of FDIC Advisory Committee on economic Inclusion.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: October 26, 2006.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 06–9005 Filed 10–27–06; 12:51 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that

at 10:30 a.m. on Thursday, November 2, 2006, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii), Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Assistant Executive Secretary of the Corporation, at (202) 898–7122.

Dated: October 26, 2006.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 06–9006 Filed 10–27–06; 12:51 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2006–N–09]

No FEAR Act Notice

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, which is now known as the No FEAR Act, each agency must inform employees, former employees, and applicants for employment of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

FOR FURTHER INFORMATION CONTACT: Gwen R. Grogan, Equal Employment Opportunity Director, *grogang@fhfb.gov*; 202–408–2892, or Federal Housing Finance Board, 1625 Eye Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. See Pub. L. 107–174, 116 Stat. 566 (May 15, 2002), codified at 5 U.S.C. 2301 note. One purpose of the No FEAR Act is ''to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Pub. L. 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Pub. L. 107–174, Title I, General Provisions, sec. 101(1). The No FEAR Act requires each agency to inform its employees, former employees, and applicants for employment of the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, *e.g.* 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you either must contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505, or online through the U.S. Office of Special Counsel Web site at *http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws up to and including removal. If the U.S. Office of Special Counsel has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (*e.g.*, EEO office, human resources office, or Office of General Counsel). Additional information regarding Federal antidiscrimination, whistleblower

protection, and retaliation laws can be found at the Equal Employment Opportunity Commission Web site at *http://www.eeoc.gov* and the U.S. Office of Special Counsel Web site at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: October 25, 2006.

By the Federal Housing Finance Board.

Gwen R. Grogan,

Equal Employment Opportunity Director.

[FR Doc. E6–18236 Filed 10–30–06; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Steven R. Blust,

Chairman.

Members of the Performance Review Board:

1. A. Paul Anderson, Commissioner.
2. Joseph E. Brennan, Commissioner.
3. Harold J. Creel, Jr., Commissioner.
4. Rebecca F. Dye, Commissioner.
5. Clay G. Guthridge, Administrative Law Judge.
6. Bryant L. VanBrakle, Secretary.
7. Bruce A. Dombrowski, Director of Administration.
8. Florence A. Carr, Director, Bureau of Trade Analysis.
9. Vern W. Hill, Director, Bureau of Enforcement.
10. Sandra L. Kusumoto, Director, Bureau of Certification and Licensing.
11. Austin L. Schmitt, Director of Operations.
12. Amy W. Larson, General Counsel.

[FR Doc. E6–18237 Filed 10–30–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 2006.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. TriState Capital Holdings, Inc., Pittsburgh, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of TriState Capital Bank, Pittsburgh, Pennsylvania (*de novo bank*).

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Charter Bankshares, Inc., Eau Claire, Wisconsin; to become a bank holding company by acquiring at least 90 percent of the voting shares of Charter Bank Eau Claire, Eau Claire, Wisconsin.

Board of Governors of the Federal Reserve System, October 26, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–18245 Filed 10–30–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, November 6, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 27, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–9012 Filed 10–27–06; 2:45 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Office of the Secretary

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.

Type of Information Collection Request: Regular, New collection.

Title of Information Collection: Evaluation of OHRP Educational Activities.

Form/OMB No.: 0990-new.

Use: The OHRP Evaluation of Educational Activities project will evaluate the outcomes of OHRP's educational (and outreach) activities and identify opportunities for improvements, based on information obtained on the research communities' educational needs related to protection of human research subjects.

Frequency: Reporting on occasion.

Affected Public: Business or other for-profit.

Annual Number of Respondents: 6,598.

Total Annual Responses: 6,598.

Average Burden per Response: 6 min.

Total Annual Hours: 660.

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 at (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Research and Technology, Office of Resource Management, Attention: Sherrette Funn-Coleman (0990–NEW), Room 537–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: August 23, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–18278 Filed 10–30–06; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the eleventh meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: November 28, 2006, from 11 a.m. to 3 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ce_main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup members will continue discussion on a personal health record.

The meeting will be available via Web cast at *http://www.hhs.gov/healthit/ahic/ce_instruct.html.*

Dated: October 20, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8969 Filed 10–30–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on November 16–17, 2006

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its twenty-seventh meeting, at which it will (1) Hear an update on stem cell research; (2) hear presentations on and discuss issues in clinical applications of advancements in genetics, as well as genetics policy and ethics; (3) discuss policy options in organ procurement, transplantation, and allocation; and (4) hear a presentation on and discuss issues in the ethics of health care. Agenda items one through three are continuations of previous Council discussions; the fourth agenda item is a new area of potential inquiry for the Council. Subjects discussed at past Council meetings (although not on the agenda for the November 2006 meeting) include: human dignity, therapeutic and reproductive cloning, assisted reproduction, reproductive genetics, neuroscience, aging retardation, and lifespan-extension. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), *Reproduction and Responsibility: The Regulation of New Biotechnologies* (March 2004), *Alternative Sources of Human Pluripotent Stem Cells: A White Paper* (May 2005), and *Taking Care: Ethical Caregiving in Our Aging Society* (September 2005).

DATES: The meeting will take place Thursday, November 16, 2006, from 9 a.m. to 5:15 p.m., ET; and Friday, November 17, 2006, from 8:30 a.m. to 12 noon, ET.

ADDRESSES: The Hamilton Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC 20005. Phone 202–682–0111.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov.*

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:45 a.m. on Friday, November 17. Comments are limited to no more than

five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail to Ms. Gianelli at one of the address given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, NW., Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

Dated: October 16, 2006.

F. Daniel Davis,

PhD., Executive Director, The President's Council on Bioethics.

[FR Doc. 06–8968 Filed 10–30–06; 8:45 am]

BILLING CODE 4154–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Physical Fitness and Sports

AGENCY: Office of Public Health and Science, Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included with this notice.

DATES: November 15, 2006, from 8:30 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Melissa Johnson, Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established originally by Executive Order 10673, dated July 16, 1956. PCPFS was established by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe. The Council has undergone two name changes and several reorganizations since its inception. Authorization to continue Council operations has been given at appropriate intervals by subsequent Executive Orders. Authority to continue Council operations was most recently directed by Executive Order 13385, dated September 29, 2005. Presently, the PCPFS serves as a program office that is located organizationally in the Office of Public Health and Science within the Office of the Secretary in the U.S. Department of Health and Human Services.

On June 6, 2002, President Bush signed Executive Order 13256 to reestablish the PCPFS. Executive Order 13256 was established to expand the focus of the Council. This directive instructed the Secretary to develop and coordinate a national program to enhance physical activity and sports participation. The Council currently operates under the stipulations of the new directive. The primary functions of the Council include to: (1) Advise the President, through the Secretary, on the progress made in carrying out the provisions of the enacted directive and recommend actions to accelerate progress; (2) advise the Secretary on ways and means to enhance opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national, State and local levels; and (4) to monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and advise the Secretary, as necessary, concerning such needs.

The PCPFS holds at a minimum, one meeting in the calendar year to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person.

Dated: October 25, 2006.

Melissa Johnson,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. E6–18244 Filed 10–30–06; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0220]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 30, 2006.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Administrative Detention and Banned Medical Devices—(OMB Control Number 0910–0114)—Extension

FDA has the statutory authority under section 304(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 334(g)), where officers or employees (FDA investigators), duly designated by the Secretary of Health and Human Services, may detain during establishment inspections devices that are believed to be adulterated or misbranded. In the **Federal Register** of March 9, 1979 (44 FR 13234), FDA issued, under § 800.55 (21 CFR 800.55), a final regulation on administrative detention procedures, under section 304(g) of the act, which includes certain reporting requirements (§ 800.55(g)(1) and (g)(2)) and recordkeeping requirements (§ 800.55(k)). Under § 800.55(g), an appellant of a detention order must show documentation of

ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f), to ban devices that present substantial deception, or unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals. The final regulation for banned devices (part 895 (21 CFR part 895)), issued in the **Federal Register** of May 18, 1979 (44 FR 29214), contained certain reporting requirements (§§ 895.21(d) and 895.22(a)).

In the **Federal Register** of June 7, 2006 (71 FR 32987), FDA published a 60-day notice requesting public comments on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.55(g)	1	1	1	25	25
895.21(d) and 895.22(a)	26	1	26	16	416
Total					441

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Record	Total Hours
800.55(k)	1	1	1	20	20

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the burden under the administrative detention provision is based on FDA's discussion with the last firm whose devices had been detained. Historically, FDA has had very few or no annual responses for this information collection.

Dated: October 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18190 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0426]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee and Modernization Act Small Business Qualification Certification (Form FDA 3602)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information that will permit an applicant to certify that it qualifies as a ''small business'' within the meaning of the Medical Device User Fee and Modernization Act (MDUFMA).

DATES: Submit written or electronic comments on the collection of information by January 2, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MDUFMA Small Business Qualification Certification (Form FDA 3602)—(OMB Control Number 0910–0508)—Extension

MDUFMA amends the Federal Food, Drug, and Cosmetic Act to provide for user fees for certain medical device applications. FDA published a **Federal Register** notice on August 2, 2006 (71 FR 43784 through 43786), announcing fees for fiscal year (FY) 2007. To avoid harming small businesses, MDUFMA provides for reduced or waived fees for applicants who qualify as a ''small business.'' This means there are two levels of fees, a standard fee, and a reduced or waived small business fee.

For FY 2006, you can qualify for a small business fee discount under MDUFMA if you reported gross receipts or sales of no more than $100 million on your Federal income tax return for the most recent tax year. If you have any affiliates, partners, or parent firms, you must add their gross receipts or sales to yours, and the total must be no more than $100 million. If your gross receipts or sales are no more than $30 million (including all of your affiliates, partners, and parent firms), you will also qualify for a waiver of the fee for your first (ever) premarket application (premarket approval (PMA), product development protocol (PDP), biologic license application (BLA), or Premarket Report). An applicant must pay the full standard fee unless it provides evidence demonstrating to FDA that it meets the ''small business'' criteria. The evidence required by MDUFMA is a copy of the most recent Federal income tax return of the applicant, and any affiliate, partner, or parent firm. FDA will review these materials and decide whether an applicant is a ''small business'' within the meaning of MDUFMA.

Form FDA 3602 is available in a guidance document entitled ''Guidance for Industry and FDA: FY 2006 MDUFMA Small Business Qualification Worksheet and Certification.'' This guidance describes the criteria FDA will use to decide whether an entity qualifies as a MDUFMA small business and will help prospective applicants understand what they need to do to meet the small business criteria for FY 2006 and subsequent fiscal years.

Description of Respondents: Respondents will be businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3602	2,000	1	2,000	1	2,000
Total					2,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden is based on the number of applications received in the last 3 years.

Dated: October 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18198 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0184]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Investigational Device Exemptions Reports and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 30, 2006.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Investigational Device Exemptions Reports and Records—21 CFR 812 (OMB Control Number 0910–0078)—Extension

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices, and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The Food and Drug Administration Modernization Act of 1997 added section 520(g)(6) to the act and permitted changes to be made to either the investigational device or to the clinical protocol without FDA approval of an investigational device exemption (IDE) supplement.

An IDE allows a device, which would otherwise be subject to provisions of the act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices, and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards.

To do this, the regulation provides for different levels of regulatory control depending on the level of potential risk the investigational device presents to

human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, ones that do not present a potential for serious harm, are subject to the reduced burden of the abbreviated requirements.

The regulation also includes provisions for treatment IDEs. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available.

Section 812.10 allows the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety.

Sections 812.20, 812.25, and 812.27 consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant risk device investigations. Section 812.20 lists the data requirements for the original IDE application; § 812.25 lists the contents of the investigational plan; and § 812.27 lists the data relating to previous investigations or testing. The information in this original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and for FDA to make a determination to approve the IDE.

Once FDA approves an IDE application, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation which affects the scientific soundness of the study or the rights, safety, or welfare of the subjects is required to submit a request for the change to FDA. Under § 812.150, a sponsor is required to submit reports to FDA. These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to assure protection of human subjects and to allow review of the study's progress.

Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interests of the public health. Section 812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device and to ensure the integrity of the controlled clinical trials.

Section 812.140 lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study; records of receipt, use, or disposition of devices; records of each subject's case history and exposure to the device; informed consent documentation; study protocol and documentation of any deviation from the protocol. Sponsors are required to maintain records including correspondence and reports concerning the study; records of shipment and disposition; signed investigator agreements; adverse device effects information; and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records on device name and intended use, study objectives, investigator information, investigational review board (IRB) information, and statement on the extent that good manufacturing practices will be followed.

The most likely respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

In the **Federal Register** of May 26, 2006 (71 FR 30425), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.10	1	1	1	1	1
812.20, 812.25, and 812.27	600	0.5	275	80	22,000
812.35 and 812.150 (reports for significant risk studies)	600	7.8	4,700	6	28,200
812.150 (reports for nonsignificant risk studies)	600	0.017	10	6	60
812.36(c)	1	1	1	120	120
812.36(f)	1	2	2	20	40
Total					50,421

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
812.140 Original	600	0.5	275	10	2,750
812.140 Supplemental	600	7	4,700	1	4,700

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
812.140 Nonsignificant	600	1	600	6	3,600
Total					11,050

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18200 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0239]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Infectious Disease Issues in Xenotransplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 30, 2006.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Infectious Disease Issues in Xenotransplantation—(OMB Control Number 0910–0456)—Extension

The statutory authority to collect this information is provided under sections 351 and 361 of the Public Health Service (PHS) act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 301 *et seq.*). The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and the general public. The PHS guideline is intended to address public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance to sponsors in the following ways: (1) The development of xenotransplantation clinical protocols, (2) the preparation of submissions to FDA, and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The guideline also describes a public health need for a national xenotransplantation database, which is currently under development by PHS. The PHS guideline is intended to protect the public health and to help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

The PHS guideline also recommends that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include the following information, as recommended by the specific PHS guideline sections: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd, or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (3.4.3.1); (3) source animal biological specimens designated for PHS use (3.7.1); animal health records (3.7.2), including necropsy results (3.6.4); and (4) recipients' biological specimens (4.1.2). The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human to human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and Human T-lymphotropic virus are human retroviruses. Retroviruses contain ribonucleic acid (RNA) that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the human cell machinery. That viral DNA can then be integrated into the human cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency

periods, e.g., approximately 30 years for Hepatitis C.

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient's medical records, and the records of the source animal for 50 years. The development of such a record system is a one-time burden. Such a system is intended to cross-reference and locate relevant records of recipients, products, source animals, animal procurement centers, and nosocomial exposures.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (INDs) and xenotransplantation product procurement centers, referred to as source animal facilities. There are an estimated 12 respondents who are sponsors of INDs that include protocols for xenotransplantation in humans. Other respondents for this collection of information are an estimated 18 source animal facilities that provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These 18 source animal facilities keep medical records of the herds/colonies as well as the medical records of the individual source animal(s). The total annual reporting and recordkeeping burden is estimated to be approximately 156 hours. The burden estimates are based on FDA's records of xenotransplantation-related INDs and estimates of time required to complete the various reporting and recordkeeping tasks described in the guideline. FDA does not expect the level of clinical studies using xenotransplantation to increase significantly in the next few years.

FDA is requesting an extension of OMB approval for the following reporting and recordkeeping recommendations in the PHS guideline:

TABLE 1.—REPORTING RECOMMENDATIONS

PHS Guideline Section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations
3.4	Standard operating procedures (SOPs) of source animal facility should be available to review bodies
3.5.1	Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened
3.5.4	Sponsor to make linked records described in section 3.2.7 available for review
3.5.5	Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement

TABLE 2.—RECORDKEEPING RECOMMENDATIONS

PHS Guideline Section	Description
3.2.7	Establish records linking each xenotransplantation product recipient with relevant records
4.3	Sponsor to maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and nosocomial exposures)
3.4.2	Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically

TABLE 2.—RECORDKEEPING RECOMMENDATIONS—Continued

PHS Guideline Section	Description
3.4.3.2	Document full necropsy investigations including evaluation for infectious etiologies
3.5.1	Justify shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement
3.5.2	Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it
3.5.4	Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient
3.6.4	Document complete necropsy results on source animals (50-year record retention)
3.7	Link xenotransplantation product recipients to individual source animal records and archived biologic specimens
4.2.3.2	Record base-line sera of xenotransplantation health care workers and specific nosocomial exposure
4.2.3.3 and 4.3.2	Keep a log of health care workers' significant nosocomial exposure(s)
4.3.1	Document each xenotransplant procedure
5.2	Document location and nature of archived PHS specimens in health care records of xenotransplantation product recipient and source animal

FDA estimates the burden for this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

PHS Guideline Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3.2.7.2[2]	1	1	1	0.5	0.5
3.4[3]	12	0.33	4	0.08	0.32
3.5.1[4]	12	0.08	(0–1) 1	0.25	0.25
3.5.4[5]	12	1	12	0.5	6.0
3.5.5[4]	18	0.06	(0–1) 1	0.2	0.2

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

PHS Guideline Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					7.27

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]No animal facility or sponsor has ceased operations in the last 3 years, however, we are using 1 respondent for estimation purposes.
[3]FDA's records indicate that an average of 4 INDs are expected to be submitted per year.
[4]To our knowledge, has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[5]Based on an estimate of 36 patients treated over a 3 year period, the average number of xenotransplantation product recipients per year is estimated to be 12.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

PHS Guideline Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
3.2.7[2]	1	1	1	16	16
4.3[3]	12	1	12	0.83	9.96
3.4.2[4]	12	11	132	0.25	33
3.4.3.2[5]	18	4	72	0.3	21.6
3.5.1[6]	12	0.08	(0–1) 1	0.5	0.5
3.5.2[6]	12	0.08	(0–1) 1	0.25	0.25
3.5.4	12	1	12	0.17	2.04
3.6.4[7]	12	2	24	0.25	6
3.7[7]	18	1.33	24	0.08	1.92
4.2.3.2[8]	12	25	300	0.17	51
4.2.3.2[6]	12	0.08	(0–1) 1	0.17	0.17
4.2.3.3 and 4.3.2[6]	12	0.08	(0–1) 1	0.17	0.17
4.3.1	12	1	12	0.25	3
5.2[9]	12	3	36	0.08	2.88
Total					148.49

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]A 1-time burden for new respondents to set up a recordkeeping system linking all relevant records. FDA estimates 1 new sponsor annually.
[3]FDA estimates there is minimal recordkeeping burden associated with maintaining the record system.
[4]Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd x 1 herd per facility x 18 facilities = 108 sentinel animals. There are approximately 24 source animals per year (see footnote 7 of this table); 108 + 24 = 132 monitoring records to document.
[5]Necropsy for animal deaths of unknown cause estimated to be approximately 4 per herd per year x 1 herd per facility x 18 facilities = 72.
[6]Has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[7]On average 2 source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient x 12 recipients annually = 24 source animals per year (see footnote 5 of table 3 of this document).
[8]FDA estimates there are approximately 12 clinical centers doing xenotransplantation procedures x approximately 25 health care workers involved per center = 300 health care workers.
[9]24 source animal records + 12 recipient records = 36 total records.

Because of the potential risk for cross-species transmission of pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, the retention of such records for up to 50 years is not information subject to the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with small patient populations, the number of records is expected to be insignificant at this time.

Information collections in this guideline not included in tables 1 through 4 can be found under existing regulations and approved under the OMB control numbers as follows: (1) ''Current Good Manufacturing Practice for Finished Pharmaceuticals,'' 21 CFR 211.1 through 211.208, approved through September 30, 2008, under OMB control number 0910–0139; (2) ''Investigational New Drug Application,'' 21 CFR 312.1 through 312.160, approved through May 31, 2009, under OMB control number 0910–0014; and (3) information included in a license application, 21 CFR 601.2, approved through September 30, 2008, under OMB control number 0910–0338. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (e.g., it may be regulated as a medical device), FDA believes, based on its knowledge and experience with xenotransplantation, that any xenotransplantation product subject to

FDA regulation within the next 3 years will most likely be regulated as a biological product.) However, FDA recognized that some of the information collections go beyond approved collections; assessments for these burdens are included in tables 1 through 4.

In table 5 of this document, FDA identifies those information collection activities that are already encompassed by existing regulations or are consistent with voluntary standards that reflect industry's usual and customary business practice.

TABLE 5.—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS

PHS Guideline Section	Description of Collection of Information Activity	21 CFR Section (Unless Otherwise Stated)
2.2.1	Document off-site collaborations	312.52
2.5	Sponsor ensure counseling patient, family, and contacts	312.62(c)
3.1.1 and 3.1.6	Document well-characterized health history and lineage of source animals	312.23(a)(7)(a) and 211.84
3.1.8	Registration with and import permit from the Centers for Disease Control and Prevention	42 CFR 71.53
3.2.2	Document collaboration with accredited microbiology labs	312.52
3.2.3	Procedures to ensure the humane care of animals	9 CFR parts 1, 2, and 3 and PHS Policy[1]
3.2.4	Procedures consistent for accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC's) guide	AAALAC international rules of accreditation[2] and NRC guide[3]
3.2.5, 3.4, and 3.4.1	Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care	211.100 and 211.122
3.2.6	Animal facility SOPs	PHS Policy[1]
3.3.3	Validate assay methods	211.160(a)
3.6.1	Procurement and processing of xenografts using documented aseptic conditions	211.100 and 211.122
3.6.2	Develop, implement, and enforce SOPs for procurement and screening processes	211.84(d) and 211.122(c)
3.6.4	Communicate to FDA animal necropsy findings pertinent to health of recipient	312.32(c)
3.7.1	PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected	312.23(a)(6)
4.1.1	Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program lifelong (justify > 2 years (yrs.)); investigator case histories (2 yrs. after investigation is discontinued)	312.23(a)(6)(iii)(f) and (g), and 312.62(b) and (c)
4.1.2	Sponsor to justify amount and type of reserve samples	211.122
4.1.2.2	System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal)	312.57(a)
4.1.2.3	Notify FDA of a clinical episode potentially representing a xenogeneic infection	312.32
4.2.2.1	Document collaborations (transfer of obligation)	312.52
4.2.3.1	Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly)	312.50
4.3	Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories	312.57 and 312.62(b)

[1]The "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (*http://www.grants.nih.gov/grants/olaw/references/phspol.htm*).

[2]AAALAC international rules of accreditation (*http://www.aaalac.org/accreditation/rules.cfm*). (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site address after this document publishes in the **Federal Register**.)

[2]AAALAC international rules of accreditation (*http://www.aaalac.org/accreditation/rules.cfm*). (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site address after this document publishes in the **Federal Register**.)

[3]NRC's "Guide for the Care and Use of Laboratory Animals" (1996).

In the **Federal Register** of June 22, 2006 (71 FR 35911), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Dated: October 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18203 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0421]

Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations in Manufacturing; Forms FDA 3486 and 3486A

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the reporting of biological product deviations in manufacturing, and Forms FDA 3486 and 3486A.

DATES: Submit written or electronic comments on the collection of information by January 2, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Biological Products: Reporting of Biological Product Deviations in Manufacturing; Forms FDA 3486 and 3486A (OMB Control Number 0910–0458)—Extension

Under section 351 of the Public Health Service Act (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards designed to ensure the continued safety, purity, and potency of such products. In addition, the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with Current Good Manufacturing Practice (CGMP) assuring that they meet the requirements of the act. All establishments manufacturing biological products including human blood and blood components must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)). Transfusion services are required under 42 CFR 493.1271 to comply with 21 CFR parts 606 and 640 as they pertain to the performance of manufacturing activities. FDA regards biological product deviation (BPD) reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14 requires the manufacturer who holds the biological product license, for other than human blood and blood components, and who had control over the product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drugs Evaluation and Research (CDER) as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171 requires a licensed manufacturer of human blood and blood components, including Source Plasma; an unlicensed registered blood establishment; or a transfusion service who had control over the product when the deviation occurred, to report to CBER as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. The BPD reporting under 21 CFR 1271.350(b) for human cells, tissues, and cellular and tissue-based products is approved under OMB control number 0910–0559 (expires November 30, 2007). Form FDA 3486 is used to submit BPDs under these regulations.

Respondents to this collection of information are the licensed manufacturers of biological products other than human blood and blood components, licensed manufacturers of blood and blood components including Source Plasma, unlicensed registered blood establishments, and transfusion services. Based on information from FDA's database, there are an estimated 147 licensed manufacturers of biological products other than human blood and blood components, 194 licensed manufacturers of human blood and blood components, including Source Plasma, and 1,230 unlicensed registered blood establishments. Based on the Center for Medicare and Medicaid Services records, there are an estimated 4,980 transfusion services. The number of licensed manufacturers and total annual responses under § 600.14 include the estimates for both CBER and CDER. The number of total annual responses is based on the number of

BPD reports FDA received in fiscal year 2005. The rate of submission is not expected to change significantly in the next few years. Based on information from industry, the estimated average time to complete a deviation report is 2 hours. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER is developing an addendum to Form FDA 3486. The web-based addendum (Form FDA 3486A) would request additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested would include information not contained in the Form FDA 3486 such as: (1) Distribution pattern, (2) method of consignee notification, (3) consignee(s) of products for further manufacture, (4) additional product information, and (5) updated product disposition. This information would be requested by CBER through e-mail notification to the submitter of the BPD report. This information would be used by CBER for purposes of recall classification. We plan to use Form FDA 3486A for only biological products regulated by CBER. We do not plan to use this form for biological products regulated by CDER because they receive very few BPD reports and do not accept electronic filings. CBER estimates that 5 percent of the total BPD reports submitted to CBER would need additional information submitted in the addendum. CBER estimates it would take between 15 to 45 minutes to complete the addendum. For calculation purposes, CBER is using one-half hour.

Activities such as investigating, changing standard operating procedures or processes, and followup are currently required under 21 CFR parts 211 (approved under OMB control no. 0910–0139, expires September 30, 2008), 606 (approved under OMB control no. 0910–0116, expires December 31, 2008), and 820 (approved under OMB control no. 0910–0073, expires September 30, 2007) and, therefore, are not included in the burden calculation for the separate requirement of submitting a BPD report to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Responses	Total Hours
600.14	3486	147	2.73	401	2.0	802
606.171[2]	3486	194	169.89	32,958	2.0	65,916
606.171[3]	3486	6,210	1.50	9,311	2.0	18,622
	3486A[4]	6,551	0.33	2,133	0.5	1,067
Total						86,407

[1] There are no capital costs or maintenance costs associated with this collection of information.
[2] Licensed manufacturers of human blood and blood components, including Source Plasma.
[3] Unlicensed registered blood establishments and transfusion services (1,230 + 4,980 = 6,210).
[4] Five percent of the total annual responses to CBER (42,653 x 0.05 = 2,133).

Dated: October 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18313 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held via teleconference on November 16, 2006 from 1 p.m. to 5 p.m.

Location: NIH campus, Food and Drug Administration Bldg. 29B, Conference Room C, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by teleconference. The public is welcome to attend the meeting at the above location. A speakerphone will be provided at the specified location for public participation in this meeting. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the internet at *http://www.nih.gov/about/visitor/index.htm*. Visitors must show two forms of identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Drive entrance of the campus which is located on Wisconsin Ave. (the medical center metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear an overview on the operations of the Laboratory of Bacterial Toxins, Division of Bacterial, Parasitic, and Allergenic Products; and the Laboratory of Vector Borne Virus Diseases, the Laboratory of Hepatitis Viruses, and the Laboratory of

Respiratory Viral Diseases, Division of Viral Products, Office of Vaccines Research and Review, CBER, and in closed session will discuss the reports from the laboratory site visits of December 6, 2005, January 11, 2006, and June 29, 2006.

Procedure: On November 16, 2006, from 1 p.m. to 3:55 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 9, 2006. Oral presentations from the public will be scheduled between approximately 2:55 p.m. to 3:55 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 2006 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 16, 2006 from 3:55 p.m. to 5 p.m. the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss a review of internal research programs in the Office of Vaccines Research and Review, Division of Viral Products and Division of Bacterial Parasitic and Allergenic Products, Center for Biologics Evaluation and Research.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 26, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–18314 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0363]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Absorbable Hemostatic Device; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Absorbable Hemostatic Device.'' The draft guidance describes a means by which the absorbable hemostatic device may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify the absorbable hemostatic device from class III (premarket approval) into class II (special controls). This draft guidance is not final, nor is it being implemented at this time.

DATES: Submit written or electronic comments on this draft guidance by January 29, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Class II Special Controls Guidance Document: Absorbable Hemostatic Device'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance 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.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141.

SUPPLEMENTARY INFORMATION:

I. Background

Absorbable hemostatic devices are primarily applied during surgical procedures in order to control bleeding that is not readily controlled via conventional means, such as cautery or ligation. At other times, an absorbable hemostatic device may be applied due to the inaccessibility of a site to conventional hemostatic methods.

On July 24, 2003, the General and Plastic Surgery Devices Panel considered the types of information the agency should include in a class II special controls guidance document for the absorbable hemostatic device and recommended that the device be reclassified from class III into class II. FDA considered the Panel's recommendations, and elsewhere in this issue of the **Federal Register**, is proposing to reclassify the absorbable hemostatic device into class II. If this reclassification rule is finalized, FDA intends that this guidance document will serve as the special control for this device.

Following the effective date of any final reclassification rule based on this proposal, any firm submitting a premarket notification (510(k)) for an absorbable hemostatic device would need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance document or in some other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the absorbable hemostatic device. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive the draft guidance document entitled ''Class II Special Controls Document: Absorbable Hemostatic Device,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document, or send a fax request to 240–276–3151 to receive a hard copy. Please use the

document number 1558 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to the review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic 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.

Dated: October 19, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–18318 Filed 10–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Cross-Site Assessment of the Residential Treatment for Pregnant and Postpartum Women (PPW) and Their Children Program—(OMB No. 0930–0269)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), is funding additional Services Grants for Residential Treatment for Pregnant and Postpartum Women (PPW). The purpose of the PPW is to expand the availability of comprehensive, high quality residential treatment services for pregnant and postpartum women who suffer from alcohol and other drug use problems, and for their infants and children impacted by the perinatal and environmental effects of maternal substance use and abuse.

Section 508 [290bb–1] of the Public Health Service Act mandates the evaluation and dissemination of findings of residential treatment programs for pregnant and postpartum women. This cross-site accountability assessment will assess project activities implemented for these services.

The grantees were brought to consensus surrounding an evaluation design and methods of data collection with accompanying instruments, via the work of the project officer and consultant experts in the field. The data collection instruments will be used for program and treatment planning, local evaluations, and for this cross-site accountability evaluation. For mothers, administration of data collection instruments will occur at intake, 6 months post-intake, discharge, and 4 months post-discharge.[1] The following four different interview instruments will be used for mothers:

1. Child Data Collection Tool, Part 1 (child's personal background) and Part 2 (child's medical background);
2. Ferrans and Powers Quality of Life Index© Generic Version—III;
3. BASIS–24® (pilot study used BASIS–32®)—behavioral health assessment; and
4. Allen Barriers to Treatment Instrument.

For all children under 18 years, program staff will collect information from observation, interview, and records review. For infants and children, data collection will occur at a time within 30 days of the mother's intake or the child's birth, 3 months post-intake/birth, 6 months post-intake/birth, discharge, and 4 months post-discharge.[1] Children's data collection tools include the following:

1. Child Well-Being Scales (staff observation and records review for all children);
2. Denver Developmental Screening Inventory II (ages 0 to 6 years, 0 days);
3. Middle Childhood Developmental Assessment Guide (ages 6 to 10);
4. Adolescent Childhood Development Assessment Guide (ages 11 to 17); and
5. CRAFFT substance abuse screening instrument (ages 11–17).

In addition, records review will be conducted by program staff on all program participants. First, at each data collection period except for 4 months post-discharge, staff will complete the Women's Medical Record Audit and the Child's Medical Record Audit (or the Newborn's Medical Record Audit at delivery.) Second, staff will complete the Women's Discharge Tool and the Children's Discharge Tool at discharge.

[1] The 4 month post-discharge administration replaces the 12-month post-admission administration approved by OMB for the pilot study. This modification was made because it is believed that post-discharge followup information will be more informative and will have more cases than 12 months post-admission.

All data will be collected using a combination of observation, records review, self-administered paper-and-pencil questionnaires, and personal interviews. CSAT will use this data for this evaluation to inform public policy, research, and programming as they relate to the provision of women's services. Data produced by this study will provide direction to the type of technical assistance that will be required by service providers of women's programming. In addition, the data will be used by individual grantees to support progress report efforts.

The following table shows the estimated annual response burden for this collection.

ESTIMATES OF BURDEN HOURS

Form name/type of administration	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Women Interviews					
Child Data Collection Tool (Personal Interview)	963	4	3,852	0.75	2,889
Allen Barriers to Treatment Instrument (Self-administered paper & pencil).	963	4	3,852	0.28	1,091
Quality of Life Inventory (Self-administered paper & pencil).	963	4	3,852	0.25	963
BASIS–24 (Personal Interview)	963	4	3,852	0.17	642
Total for Women	963		15,408		5,585
Child Interviews/Observations					
Denver Developmental Screening Inventory II (ages 0m to 6y, 0m) (Personal Interview & Observation).	1,926	5	9,630	0.50	4,815
CRAFFT (ages 11–17) (Personal Interview)	1,225	5	6,125	0.17	1,021
Middle Childhood Developmental Guide (ages 6 to 10) (Personal Interview).	657	5	3,285	0.33	1,095
Adolescent Development Guide (ages 11 to 17) (Personal Interview).	1,225	5	6,125	0.33	2,042
Total for Children	3,852		25,165		8,973
Observation/Records Review by Staff at 8 Facilities					
Child Well-Being Scales (age 0–17) (Observation & Records Review).	8	3,852 X 5	19,260	0.33	6,420
Women's Medical Record Audit (Records Review)	8	963 X 3	2,889	0.25	722
Children's Medical Record Audit (Records Review)	8	2,812 X 1 (intake) 3,852 X 3 (follow-up)	14,368	0.25	3,592
Newborns' Medical Record Audit (Records Review)	8	1,040 X 1	1,040	0.08	87
Women's Discharge Tool (Records Review)	8	963 X 1	963	0.58	562
Children's Discharge Tool (Records Review)	8	3,852 X 1	3,852	0.58	2,247
Total for Staff:	8		42,372	2.08	13,630
3-Year Total	4,823		82,945		28,188
Average Annual	1,608		27,648		9,396

Note: For mothers, administration of data collection instruments will occur at: (1) Intake, (2) 6 months post-intake, (3) discharge, and (4) 4 months post-discharge. For the Child Data Collection Tool, each mother will respond for each of her estimated 4 children at intake only. For infants and children, data collection will occur at: (1) a time within 30 days of the mother's intake or the child's birth, (2) 3 months post-intake/birth, (3) 6 months post-intake/birth, (4) discharge, and (5) 4 months post-discharge. It is estimated that 27 percent (1,040) of the children (3,852) will be delivered while the woman is in the treatment facility. For these infants, the Newborn's Medical Record Audit will be completed at delivery, and the Children's Medical Record Audit will be completed at 3 months post-admission, 6 months post-admission, and at discharge.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by January 2, 2007.

Dated: October 4, 2006.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E6–18266 Filed 10–30–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–26114]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DHS.

ACTION: Notice of funds availability.

SUMMARY: The Coast Guard seeks applications for fiscal year 2007 grants and cooperative agreements from national, nongovernmental, nonprofit public service organizations. The Boating Safety Financial Assistance Program is listed in section 97.012 of the Catalog of Federal Domestic

Assistance. These grants and cooperative agreements would be used to fund projects on various subjects promoting recreational boating safety on a national scope. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after November 1, 2006. Proposals for the fiscal year 2007 grant cycle must be received before 3 p.m. Eastern time, January 22, 2007.

ADDRESSES: Application packages may be obtained by calling the Coast Guard at 202–372–1060. Submit proposals to: Commandant (G-PCB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard and on the Internet at *http://dms.dot.gov* in docket USCG–2006–26114 or at the Web site for the Office of Boating Safety at *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G-PCB–1/ Room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; 202–372–1060; e-mail *Vickie.L.Hartberger@uscg.mil.* The points of contact for the seven project areas of particular interest are listed at the end of the description of each project area.

SUPPLEMENTARY INFORMATION: Title 46, United States Code, Section 13103, allocates funds available from the Aquatic Resources Trust Fund for recreational boating safety grants. The majority of funds are allocated to the states, and up to 5 percent of these funds may be distributed by the Coast Guard for grants and cooperative agreements for national recreational boating safety activities of national nonprofit public service organizations. It is anticipated that approximately $5,400,000 will be made available for fiscal year 2007. Thirty awards totaling $4,615,400 were made in fiscal year 2006, ranging from $10,000 to $550,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after November 1, 2006. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

Prospective grantees may propose up to a 5-year grant with 12-month (fiscal year) increments identified. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) type of award, the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide additional future support, provided funds are available, the project continues to support the needs of the government, and the achieved results warrant further support. Award of continuation grants will be made on a strict case-by-case basis to assist planning in certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case-by-case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues.

The following list includes items of specific interest to the Coast Guard; however, potential applicants should not be constrained by the list. We welcome any initiative that supports the mission of the Coast Guard Office of Boating Safety that is to ensure the public has a safe, enjoyable and secure recreational boating experience by implementing programs that minimize the loss of life, personal injury, and property damage, and the goal of the Recreational Boating Safety Program which is achieving a reduction in recreational boating injuries and fatalities by:

- Improving the reliability of boating accident reporting, which assists in identifying causal factors that could then be addressed through education and/or regulation;
- Increasing Awareness of Safe Boating Practices;
- Increasing lifejacket wear;
- Decreasing the number of alcohol-related accidents;
- Increasing operator compliance with navigation rules;
- Increasing operator compliance with USCG safety equipment carriage requirements;
- Tracking completion of advanced boating education courses with the future goal of using this data to increase said training; or
- Tracking and increasing the number of National Association of State Boating Law Administrators (NASBLA)-approved boating safety education certificates issued annually.

Some project areas of continuing and particular interest for grant funding include the following:

1. *Develop and Conduct a National Year-Round Safe Boating Campaign* that focuses on providing support to address areas that have been identified through the Coast Guard's Strategic Planning Process. The Coast Guard seeks a grantee to plan, develop and implement a 2008 National Safe Boating Campaign that promotes a concentrated effort to target specific boater market segments and recreational boating safety topics. This year-round campaign must coincide with the objectives of the National Recreational Boating Safety Program. The nationwide activities of this public awareness campaign should be based on the support of the volunteers and professional groups at the grassroots (local) level. Key to this collaborative effort is how it will complement the Coast Guard's national outreach initiatives. The major focus of the effort will be to modify the behavior of all boaters with special focus on boat operators being responsible for their own safety as well as the safety of their passengers. Significant emphasis should be placed on Personal Flotation Device (PFD) wear, boater education, safety and security issues, propeller injury prevention, and the dangers of carbon monoxide, as well as boating under the influence of alcohol or drugs. Efforts will also be coordinated, year-round, with other national safety initiatives and special media events.

Point of Contact: Ms. Jo Calkin, 202–372–1065.

2. *Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference.* The Coast Guard seeks a grantee to plan, implement, oversee, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the National Recreational Boating Safety Program. The overall conference focus should have promotional strategies with special emphasis on boat operators being responsible for their own safety as well

as the safety of their passengers. Significant emphasis should be placed on offering multiple subjects that afford the participants professional development opportunities and educational enhancement. Subjects should focus on, but not be limited to: PFD wear, safety and security issues, propeller injury prevention, the dangers of carbon monoxide, boater education, vessel safety, outreach and awareness efforts, as well as boating under the influence of alcohol or drugs.

Point of Contact: Ms. Jo Calkin, 202–372–1065.

3. *Federal/State Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to measurably enhance uniformity and reciprocity in State boating safety laws/regulations and other state boating safety efforts. The grantee would provide a forum to encourage such uniformity and reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing State laws and regulations pertaining to boating safety. The grantee would further provide a forum to encourage sufficient patrol and other activities to ensure adequate enforcement of state boating safety laws and regulations, provision of an adequate U.S. Coast Guard (USCG) recognized State boating safety education program, enhanced maintenance of USCG approved vessel numbering system and enhanced implementation of a USCG approved marine casualty reporting system. Point of Contact: Ms. Audrey Pickup, 202–372–1063.

4. *Develop and Conduct Boating Accident Investigation Seminars.* The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including four courses at the U.S. Coast Guard's Maritime Law Enforcement Academy in Charleston, South Carolina. Point of Contact: Mr. Rick Gipe, 202–372–1074.

5. *National Estimate of Personal Flotation Devices (PFDs) Wear Rate.* The Coast Guard seeks a grantee to provide reliable and valid national estimates of personal flotation device (PFD or lifejacket) wear by recreational boaters. Wear rates of PFDs should be based on actual observations taken from a representative sample of boaters across a range of water venues that include lakes, rivers, and bays. It is essential that observation methods remain as close as possible to those used in previous years so the number of boats, types of boats, length of boats, operation and activity of boats, as well as the age and gender of the boaters observed remain consistent. Using the design of the National PFD Wear Rate Study as a base, a supplemental observational study is solicited to determine if PFD wear rates are higher in an area after the roll-out of the annual Safe Boating Campaign. The grantee shall conduct observations in areas around the country that have relatively high boating activity in the summer and therefore may be expected to have a reasonable level of activity to make conclusions about changes in wear rates more stable. Observation data for 2007 will be collected for inclusion in the baseline measure. In the summer of 2008, the post-campaign measurement will be conducted. Point of Contact: Mr. Bruce Schmidt, 202–372–1059.

6. *Voluntary Standards Development Support.* The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Po Chang, 202–372–1075.

7. *PFD Wear Rate Strategy for Anglers.* The Coast Guard seeks a grantee to develop and implement a national outreach and awareness strategy designed to raise the level of boating safety consciousness among anglers. This year-round strategic effort must support the organizational objectives of the National Recreational Boating Safety Program as well as have the capacity to be implemented into the Coast Guard national outreach initiatives. The major focus will be to specifically target the behavior of anglers while boating with a significant emphasis on their responsibility as boat operators to wear a lifejacket/PFD as well as ensure that all passengers do the same. Point of Contact: Ms. Jo Calkin, 202–372–1065.

We encourage proposals addressing other boating safety concerns.

Potential grantees should focus on partnership, *e.g.*, exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. The primary goal of the National Recreational Boating Safety Program is to reduce fatalities to specific levels for each upcoming year. With your application, we encourage you to list and describe the tools you will use to measure your grant's performance toward achieving this goal or toward achieving a specific objective that will result in the achievement of this goal. For some examples of tools, we invite you to explore this CDC Web site: *http://www.cdc.gov/ncipe/ pub-res/ demonstr.htm.*

This announcement is available on the *http://www.grants.gov* Web site; we are also publishing the information in the **Federal Register** again this year to provide information to the public in a timely manner.

Dated: October 20, 2006.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. E6–18265 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: TSA Web Site Usability Development: Focus Groups and Online Survey

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 9, 2006, 71 FR 33478.

DATES: Send your comments by November 30, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Katrina Kletzly, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Web Site Usability Development: Focus Groups and Online Survey.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): NA.

Affected Public: Visitors to the TSA Web site; travelers at airports who volunteer for focus groups.

Abstract: In order to provide a useful public Web site, TSA seeks to administer two data collections, ''Web site Focus Groups'' and ''Web site Online Survey,'' to obtain feedback concerning the usability, content, focus and user satisfaction of TSA's Web site. TSA will use the data obtained through these collection methods to deliver effective and engaging information to meet customers' needs and continuously improve TSA's Web site usability. TSA intends to conduct 15 Web site focus groups annually, each with a target of 10 total participants and an estimate of a 1 hour burden per respondent. TSA estimates a maximum total annual burden of 150 hours (10 participant hours per focus group session times 15 focus group sessions equals 150 hours total). TSA also intends to conduct voluntary Web site surveys to collect data for improved content and usability, which will be available via the TSA Web site (*http://www.tsa.gov*). Surveys will comprise an approximate five-minute burden per respondent and an aggregate burden of 34 hours per year, based on an estimated 400 online surveys voluntarily completed per year (400 surveys times 5 minutes per survey equals 2000 minutes total, which is then divided by 60 minutes, resulting in 34 hours total).

Number of Respondents: 550.

Estimated Annual Burden Hours: An estimated 184 hours annually.

Issued in Arlington, Virginia, on October 24, 2006.

Peter Pietra,

Director of Privacy Policy and Compliance.

[FR Doc. E6–18212 Filed 10–30–06; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID100 1220MA 024D 252X; DBG071002]

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held November 21, 2006, beginning at 8 a.m. and adjourning at 5 p.m. A field trip is scheduled for the morning hours, departing from the BLM Boise District Offices. Selected recreation areas will be evaluated located in the Owyhee Field Office. The afternoon session will be held at the American Legion-Community Center, Phipps Watson Hall, Marsing, ID. Public comment periods will be held after topics on the agenda.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. The agenda and meeting topics will include the following:

- Field Trip to assess selected recreation areas in the Owyhee Field Office;
- Introduction of newly appointed RAC members;
- Review of Action Items from previous RAC meeting;
- Hot Topics;
- Review and discussion of issue papers sent to RAC of planned activities in the District and three Field Offices;
- Subcommittee Reports:
  - OHV & Transportation Management;
  - Sage Grouse Habitat Management;
  - Resource Management Plans (RMPs)
    - —Bruneau Field Office' Draft RMP–EIS Alternatives
    - —Update on Draft EIS for the NCA–RMP
  - River and Recreation Management
    - —Update on new Recreation RAC Subcommittee formation

Agenda items and location may change due to changing circumstances, including wildfire emergencies. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM Coordinator as provided above. Expedited publication is requested to give the public adequate notice.

Dated: October 24, 2006.

Jerry L. Taylor,

District Manager.

[FR Doc. E6–18273 Filed 10–30–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–07; NMNM 98210]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 98210

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a

petition for reinstatement of oil and gas lease NMNM 98210 from the lessee, Chesapeak Permian, L.P., for lands in Roosevelt County, New Mexico. The petition was filed on time and it was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, at (505) 438–7530.

SUPPLEMENTARY INFORMATION: No lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16 2/3 percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 98210, effective the date of termination, March 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: October 20, 2006.

Bernadine T. Martinez,

Land Law Examiner, NMSO.

[FR Doc. E6–18235 Filed 10–30–06; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: Agenda items for the meeting of the Royalty Policy Committee (RPC) will include remarks from the Director, MMS, and the Associate Director, Minerals Revenue Management (MRM), as well as updates from the following subcommittees: Coal, Federal Oil and Gas Valuation, and Oil and Gas Royalty Reporting.

The RPC membership includes representatives from states, Indian tribes, individual Indian mineral owner organizations, minerals industry associations, the general public, and other Federal departments.

DATES: Tuesday, November 14, 2006, from 8:30 a.m. to 4:30 p.m., mountain time.

ADDRESSES: The meeting will be held at the Sheraton Denver West, 360 Union Boulevard, Lakewood, Colorado, telephone 303–987–2000 or 1–800–325–3535.

FOR FURTHER INFORMATION CONTACT: Gina Dan, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 300B2, Denver, Colorado 80225–0165, telephone number (303) 231–3392, fax number (303) 231–3780, e-mail *gina.dan@mms.gov.*

SUPPLEMENTARY INFORMATION: The RPC provides advice to the Secretary and top Department officials on minerals policy, operational issues, and the performance of discretionary functions under the laws governing the Department's management of Federal and Indian mineral leases and revenues. The RPC reviews and comments on revenue management and other mineral-related policies and provides a forum to convey views representative of mineral lessees, operators, revenue payors, revenue recipients, governmental agencies, and the interested public. Dates and locations of future meetings will be published in the **Federal Register** and posted on our Internet site at *http://www.mms.gov/mmab/RoyaltyPolicyCommittee/rpc_homepage.htm.* Meetings will be open to the public without advanced registration on a space-available basis. To the extent time permits, the public may make statements during the meetings, and file written statements with the RPC for its consideration. Copies of these written statements should be submitted to Gina Dan by November 6, 2006. Transcripts of this meeting will be available for public inspection and copying at our offices located in Building 85, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. These meetings are conducted under the authority of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., Appendix 1) and the Office of Management and Budget (Circular No. A–63, revised).

Dated: October 24, 2006.

Lucy Querques Denett,

Associate Director, Minerals Revenue Management.

[FR Doc. E6–18372 Filed 10–30–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 14, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 15, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

CALIFORNIA

Lake County

Rattlesnake Island, 12900 Sulphur Bank Mine Rd., Clearlake Oaks, 06001047

COLORADO

El Paso County

Edgeplain, 1106 N. Nevada Ave., Colorado Springs, 06001048

Rice, Ida M., House, 1196 N. Cascade Ave., Colorado Springs, 06001049

DELAWARE

Sussex County

Roosevelt Inlet Shipwreck, Lower Delaware Bay, Lewes, 06001056

KANSAS

Butler County

Oldham, James T., House, 321 S. Denver St., El Dorado, 06001054

Ness County

Tilley, Henry, House, 108 W. 2nd St., Ransom, 06001053

Osborne County

Natoma Presbyterian Church, 408 N. 3rd St., Natoma, 06001052

Riley County

Community House, 120 N. 4th St., Manhattan, 06001051

Smith County

Allen's Market, 2938 E. Douglas Ave., Wichita, 06001050

MASSACHUSETTS

Franklin County

Colrain Center Historic District, Main, Greenfield, Jacksonville Rds., Streeter Ln, River and Coburn Sts., Colrain, 06001057

NEBRASKA

Custer County Broken Bow Commercial Square Historic District, Five blks in downtown Broken Bow centered around public square, Broken Bow, 06001058

Dawes County

Chadron Commercial Historic District, Main St. & 2nd St., Chadron, 06001059

NEVADA

Clark County

Woodlawn Cemetery, 1500 Las Vegas Blvd N, Las Vegas, 06001060

PENNSYLVANIA

Dauphin County

Derry Session House and Enclosure, 248 E. Derry Rd., Hershey, 06001061

Erie County

Academy Hall, On the campus of Edinboro University, Jct. of Highland and Normal Sts, Edinboro, 06001055

RHODE ISLAND

Providence County

Pascoag Grammar School, 265 Sayles Ave., Burrillville, 06001062

TEXAS

Harris County

First Evangelical Church, 1311 Holman St., Houston, 06001066

Orange Show, 2401 Munger St., Houston, 06001063

Kleberg County

Nance–Jones House, 426 E. Johnston Ave., Kingsville, 06001064

Tarrant County

Eighth Avenue Historic District, Bounded by 8th Ave., Pennsylvania Ave., 9th Ave., and Pruitt St., Fort Worth, 06001065

UTAH

Garfield County

Panguitch Historic District, Roughly bounded by 500 North, 400 East, 500 South, and 300 West, Panguitch, 06001068

Salt Lake County

Ashby Apartments, 358 E. 100 South, Salt Lake City, 06001067

WISCONSIN

Walworth County

Sheboygan Light, Power and Railway Company Car #26, 2015 Division St., East Troy, 06001069

[FR Doc. E6–18302 Filed 10–30–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on July 19, 2006, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma Hydroxybutyric Acid (2010).	I
Ibogaine (7260)	I
Alpha-methyltryptamine (7432)	I
Dimethyltryptamine (7435)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (except HCl) (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene bulk (9273) (non-dosage form).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 30, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: October 24, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18253 Filed 10–30–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for

the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 16, 2006, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import Phenylacetone to manufacture Amphetamine.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 30, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: October 24, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18251 Filed 10–30–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment Standards Administration

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 preclearance 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 Employment Standards Administration is soliciting comments concerning the proposed collection: Davis-Bacon and Related Act/Contract Work Hours and Safety Standards Act Reporting Requirements—Regulations, 29 CFR Part 5. 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 January 2, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: Regulations 29 CFR Part 5 prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon (DBA), 40 U.S.C. 3141 *et seq.*, the Davis-Bacon Related Acts (DBRA), and labor standards for all contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 3701 *et seq.* The DB and DBRA require payment of locally prevailing wages and fringe benefits, as determined by the Department of Labor (DOL), to laborers and mechanics on most federally financed or assisted construction projects. See 40 U.S.C. § 3142(a) and 29 CFR 5.5(2)(1). The CWHSSA requires the payment of one and one-half times the basic rate of pay hours worked over forty in a week on most Federal contracts involving the employment of laborers or mechanics. See 40 U.S.C. 3702(c) and 29 CFR 5.5(b)(1). The requirements of this information collection consist of: (A) reports of conformed classifications and wage rates, and (B) requests for approval of unfunded fringe benefit plans. This information collection is currently approved for use through May 31, 2007.

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 approval for the extension of this information collection in order to ensure that federal contractors are in compliance with the DBA, DBRA, and CWHSSA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Davis-Bacon and Related Acts/ Contract Work Hours and Safety Standards Act Reporting Requirements-Regulations, 29 CFR Part 5.

OMB Number: 1215–0140.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Requirement	Number of respondents	Number of responses	Estimated time per response	Burden hours
Conformance Reports	3,000	3,000	15 minutes	750
Unfunded Fringe Benefit Plans	6	6	6 hours	6
Total	3,006	3,006		756

Frequency: On Occasion.

Estimated Total Burden Hours: 756.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,263.

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: October 26, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–18282 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request Annual Report for Multiple Employer Welfare Arrangements (Form M–1)

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning a proposed extension of the current approval of an information collection entitled Annual Report for Multiple Employer Welfare Arrangements (Form M–1), contained in the Department's regulation at 29 CFR 2520.101–2, Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Medical Care to the Employees of Two or More Employers. A copy of the Department's information collection request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before January 2, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified as Part 7 of Title I of the Employee Retirement Security Act of 1974 (ERISA), was enacted to improve the portability and continuity of health care coverage for participants and beneficiaries of group health plans. In the interest of assuring compliance with Part 7, section 101(g) of ERISA, added by HIPAA, further permits the Secretary of Labor (the Secretary) to require multiple employer welfare arrangements (MEWAs), as defined in section 3(40) of ERISA, to report to the Secretary in such form and manner as the Secretary might determine. The Department published a final rule providing for such reporting on an annual basis, together with a form (Form M–1) to be used by MEWAs for the annual report. The reporting requirement enables the Secretary to determine whether the requirements of Part 7 of ERISA are being carried out. EBSA submitted an ICR for the information collection in Form M–1 to the Office of Management and Budget (OMB) for review and clearance in connection with publication of the final rule, and OMB approved the information collection under OMB control number 1210–0116. This approval is scheduled to expire on January 31, 2007. After considering any comments received in response to this notice, EBSA intends to submit an ICR to OMB to request continuing approval. The public is not required to respond to an information collection unless it displays a valid control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

This notice requests comments on an extension of OMB's approval of the information collection included in Form M–1. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception (Form M–1).

OMB Number: 1210–0116.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 741.
Frequency of Response: Annually.
Responses: 3,718.
Estimated Total Burden Hours: 2,336.
Total Burden Cost (Operating and Maintenance): $143,650.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Joseph S. Piacentini,
Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E6–18230 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Employee Benefit Plan Claims Procedures Under ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the current approval of information collection provisions incorporated in the regulation pertaining to employee benefit plan claims procedures under the Employee Retirement Income Security Act of 1974 (ERISA). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before January 2, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 503 of ERISA requires each employee benefit plan to provide, pursuant to regulations promulgated by the Secretary of Labor, notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied. The notice must set forth the specific reasons for the denial and must be written in a manner calculated to be understood by the claimant. Plans must also give a participant or beneficiary whose claim has been denied a reasonable opportunity to obtain a full and fair review of any benefit claim denial by the appropriate named fiduciary.

The Department issued a regulation pertaining to benefit claims procedures in 1977 and amended that regulation in a Notice of Final Rulemaking (NFRM) published on November 21, 2000 (65 FR 70246). The regulation pertaining to benefit claims procedures is codified at 29 CFR 2560.503–1. The regulation requires plans to establish reasonable claims procedures that meet specified standards governing the timing and content of notices and disclosures. EBSA submitted an ICR for the information collections in 29 CFR 2560.503–1 to the Office of Management and Budget (OMB) for review and clearance in connection with publication of the NFRM, and OMB approved the information collections under OMB control number 1210–0053. That approval is scheduled to expire on February 28, 2007. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB to request continuing approval. The public is not required to respond to an information collection unless it displays a valid control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2560.503–1. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.
Title: Employee Benefit Plan Claims Procedures under ERISA.
Type of Review: Extension of a currently approved collection of information.
OMB Number: 1210–0053.
Affected Public: Business or other for-profit; Not-for-profit institutions.
Respondents: 6,700,000.
Responses: 118,000,000.
Estimated Total Burden Hours: 333,000.
Estimated Total Burden Cost (Operating and Maintenance): $90,000,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Joseph S. Piacentini,
Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E6–18231 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; ERISA Investment Manager Electronic Registration

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the

Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the current approval of information collection provisions incorporated in the regulation pertaining to electronic registration of investment managers under ERISA. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before January 2, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3(38)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) imposes certain registration requirements on an investment adviser that wishes to be considered an investment manager under ERISA. In 1997, section 3(38) was amended to permit advisers to satisfy the registration requirements by registering electronically with the Investment Adviser Registration Depository (IARD) established and maintained by the Securities Exchange Commission (SEC). The Department promulgated a final regulation (69 FR 52120, August 24, 2004) to implement the statutory change. The final regulation is codified at 29 CFR 2510.3–38. EBSA submitted an ICR requesting OMB approval of the information collection contained in 29 CFR 2510.3–38 when the proposed regulation was published, and OMB approved the information collection under OMB control number 1210–0125. The approval is scheduled to expire on January 31, 2007. The Department intends, following receipt of comments pursuant to this notice, to submit an ICR to OMB requesting an extension of its approval of this information collection. The public is not required to respond to an information collection unless it displays a valid OMB control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submissions of responses.

III. Current Actions

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2510.3–38. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Investment Manager Electronic Registration.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0125.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 500.

Responses: 500.

Estimated Total Burden Hours: 1,000.

Estimated Total Burden Cost (Operating and Maintenance): $50,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E6–18232 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Summary Plan Description Requirements Under ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the current approval of information collection provisions in the regulation pertaining to summary plan description requirements under ERISA. A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before January 2, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(b) of the Employee Retirement Income Security Act of 1974 (ERISA) requires the administrator of an employee benefit plan to furnish plan participants and certain beneficiaries with a Summary Plan Description (SPD) that describes, in language understandable to an average plan participant, the benefits, rights, and obligations of participants in the plan. The information required to be contained in the SPD is set forth in section 102(b) of ERISA. To the extent that there is a material modification in the terms of the plan or a change in the required content of the SPD, section 104(b)(1) of ERISA requires the administrator to furnish participants and specified beneficiaries a summary of material modifications (SMM) or summary of material reductions (SMR). The Department of Labor (Department) has issued regulations providing guidance on compliance with the requirements to furnish SPDs, SMMs, and SMRs. These regulations, which are codified at 29 CFR 2520.102–2,102–3, and 29 CFR 104b–2 and 104b–3, contain information collections for which the Department has obtained OMB approval under the OMB Control No. 1210–0039. The current approval is scheduled to expire on January 31, 2007, and the Department intends, following receipt of comments pursuant to this notice, to submit an ICR to OMB requesting an extension of its approval of these information collections. The public is not required to respond to an information collection unless it displays a valid control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

III. Current Actions

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2520.102–2,102–3, and 29 CFR 104b–2 and 104b–3. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary Plan Description Requirements under ERISA.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0039.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 900,000.

Responses: 50,000,000.

Estimated Total Burden Hours: 1,100,000.

Estimated Total Burden Cost (Operating and Maintenance): $400,000,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E6–18233 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. D–08295 and D–10365]

RIN 1210–ZA10

Prohibited Transaction Exemption (PTE) 2006–16; Class Exemption To Permit Certain Loans of Securities by Employee Benefit Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Adoption of Amendment and Revocation of PTEs 81–6 and 82–63.

SUMMARY: This document amends and replaces Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981) and PTE 82–63 (47 FR 14804, April 6, 1982). PTE 81–6 exempts the lending of securities by employee benefit plans to certain banks and broker-dealers, and PTE 82–63 exempts certain compensation arrangements for the provision of securities lending services by a plan fiduciary to an employee benefit plan. The final amendment incorporates the exemptions into one renumbered exemption, and expands the relief that was provided in PTEs 81–6 and 82–63 to include additional parties and additional forms of collateral subject to the specified conditions. The exemption affects participants and beneficiaries of employee benefit plans, persons who lend securities on behalf of such plans, and parties in interest who engage in securities lending transactions with such plans.

DATES: The effective date of this amendment is January 2, 2007. The revocation of PTEs 81–6 and 82–63 is effective on January 2, 2007.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8540 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 23, 2003, the Department proposed a notice in the **Federal Register** of a proposed class exemption to amend PTEs 81–6 and 82–63 by incorporating PTEs 81–6 and 82–63 into a new class exemption and expanding the existing relief from the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code to additional parties under modified conditions.[1] The notice also proposed the revocation of PTEs 81–6 and 82–63. The proposal was published in response to two exemption applications. One application was submitted by the American Bankers Association (ABA) (D–08295), and the second application was submitted by the Robert Morris Associates, now known as the Risk Management Association (RMA) (D–10365). The applications were filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. The Department received six public comments. No request for a hearing was received. Upon

[1] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue exemptions under Code section 4975(c)(2) to the Secretary of Labor.

consideration of the comments received, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the comments are discussed below.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This class exemption has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this exemption is not a ''significant regulatory action'' under section 3(f) of the Executive Order. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data will be provided in the desired format, that the reporting burden (time and financial resources) imposed on respondents is minimized, that the public can clearly understand the Department's collection instruments, and that the Department can properly assess the impact of its collection requirements on respondents.

The Department previously solicited comments concerning the information collection request (ICR) included in the Proposed Amendment to PTE 81–6 and Proposed Restatement and Redesignation of PTE 82–63 (the Proposal) when that document was published in the **Federal Register** on October 23, 2003 (68 FR 60715). The ICR re-stated and combined then-existing ICRs previously approved under OMB Control Numbers 1210–0065 (PTE 81–6) and 1210–0062 (PTE–82–63) and requested approval for the program changes set forth in the Proposal, as well as an adjustment in the burden estimates based on updated information. The ICR was reviewed by OMB and approved on April 11, 2004, under the control number 1210–0065, and that approval is currently scheduled to expire on December 31, 2006.

The class exemption published in this notice has been revised from the Proposal in two basic ways. First, the categories of eligible foreign banks and broker dealers have been broadened to include foreign banks and broker dealers located in additional specified foreign countries, provided that such entities meet the additional specified conditions. Second, the permitted types of collateral for loans of securities by plans to eligible banks and broker dealers have been enlarged to include additional types of collateral. Currently, the Department is soliciting comments concerning revisions in the burden estimates for the ICR resulting from these modifications and from further changes in the Department's assumptions and estimation methodology, which are due to better understanding of the existing market for foreign and domestic securities lending. After consideration of any public comments received in response to this solicitation, the Department intends to submit an ICR to OMB for review of the paperwork burden modifications and changes described in this section. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The Department will publish notice in the **Federal Register** of OMB's decision upon review of the Department's ICR.

A copy of the ICR may be obtained by contacting Susan G. Lahne, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers. The ICR also may be viewed via the internet at *http://www.reginfo.gov/public/do/PRAMain*. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through January 2, 2007, OMB requests that comments be received within 30 days of publication of this class exemption to ensure their consideration.

The Department has consulted with industry experts and has received additional information on the nature and operation of the foreign and domestic securities lending markets. Based on this new information, the Department is revising its prior paperwork burden analysis to reflect its better understanding of the likely impact of the exemption.

In its prior paperwork burden analysis, the Department based its estimates conservatively on the assumption that all domestic broker dealers and banks with trust powers would take advantage of the exemption. This led to an estimate of 13,900 domestic entities that would be respondents to the information collections of the Proposal. Given the highly sophisticated nature of the securities lending market in general and the specific limitations of the exemption in particular, including the required indemnification agreements, equity capital minimums, and levels of collateralization, the Department believes that its original estimate

overstated the likely incidence of reliance. The Department now assumes that the exemption will be relied upon only by the limited group of large, sophisticated domestic broker dealers and banks currently active in the securities lending market, which the Department estimates at approximately 140 separate entities. In addition, the Department estimates that in total 60 foreign broker dealers and banks will begin to rely upon the exemption in its final form, including the 13 entities located in the United Kingdom that were previously included in the Department's paperwork burden analysis for the Proposal. This produces a total estimate of 200 respondents.

Given the nature of securities lending practices, which require expert knowledge, efficient and sophisticated communications systems, and careful monitoring and control of the timing of securities loan transactions, the Department further believes that each of the borrowing entities will establish securities lending relationships with only a limited number of plans. For purposes of this estimate, the Department has assumed that each borrower will sign a contract with no more than 10 employee benefit plans.

The specific information collections of this exemption have not changed from the Proposal. As described in the prior ICR, the exemption provides that, before a plan can lend securities, the borrower must provide the plan with a financial statement. In addition, the agreements regarding the loan transaction or series of transactions and the compensation arrangement for the Lending Fiduciary must be described in a written document. The Department continues to assume that these documents are routinely prepared by the respondent entities in-house as part of usual and customary business practice. The Department has therefore treated the preparation and review of these documents as an hour burden for purposes of this analysis; the cost burden derives solely from material and postage costs for distribution. These costs were estimated at $4.00 per priority or overnight domestic mailing of the documents. Discussions with industry experts indicated that nearly all of the foreign-based institutions likely to rely on the exemption have established domestic branches. The Department assumes, therefore, that all mailings will be handled by the domestic-based operations and that there will be few, if any, respondents using foreign mail services.

The Department has also assumed that the respondents, all of which are large, sophisticated financial entities, will generally communicate by electronic means. Because electronic communications will be undertaken through existing electronic systems and databases, the Department has not added any additional burden for documents that are assumed to be distributed by electronic means.

Financial statements. The Department assumes that each of the 200 respondents will provide each plan with which it has a master lending agreement (10 plans each) with a new financial statement on a quarterly basis, resulting in an estimate of 8,000 financial statements distributed annually (200 respondents × 10 plans × 4 quarterly financial statements). No preparation burden for these statements is assumed, however, since the financial statements will have been prepared for other purposes. The Department has assumed that only 10 percent of the respondents will distribute the financial statements in paper by mail. For the 800 financial statements that are therefore assumed to be distributed annually by mail (10 percent of 8,000 = 800), the Department assumes an hour burden of 5 minutes per statement, consisting of the preparation of an overnight or priority delivery package, resulting in an annual hour burden of 67 hours of clerical time (800 mailings × 5 min./60 min.). For these purposes, each statement is assumed, based on financial statements filed with the Securities and Exchange Commission, to consist of 10 pages. For the 800 financial statements delivered via mail, the Department further assumes a total annual cost of $3,200 (800 mailings × $4.00 per mailing).

For the remaining 90 percent of the financial statements distributed annually, or 7,200 statements (8,000 − 800 = 7,200), the Department has assumed electronic distribution and has not estimated any additional distribution burden.

Lending and compensation agreements. The Department assumes that each respondent will use master agreements for both the lending agreement and the lending fiduciary compensation agreement and will review and distribute them on an annual basis. For purposes of burden analysis, the Department has assumed that each respondent will annually require 30 minutes to review each of these two agreements for compliance (1 hour total per respondent), resulting in an annual hour burden of 200 hours (200 respondents × 1 hour per respondent).

The respondents are further assumed to require 5 minutes to package and mail the agreements. Because of the nature of these agreements, the Department assumes that the respondents will provide each of their plan partners with a single mailing annually containing both the lending agreement and the compensation agreement for that partner and that all agreements will be distributed in paper form by priority or overnight mail. The total time for preparation is 167 hours (200 respondents × 10 lending partners × 5 minutes per agreement)/60). The cost for the distribution of these 2,000 documents (2,000 = 200 respondents × 10 lending partners each) by overnight or priority mail is estimated at $8,000.

The total annual hour burden for this information collection, based on these assumptions, is therefore 434 hours (67 hours + 200 hours + 167 hours). The equivalent cost of the annual hour burden is estimated at $21,514, based on $16,600 for legal staff review of the agreements (200 hours × $83 per hour = $16,600) and $4,914 for clerical time to prepare and distribute the documents (234 hours × $21 per hour = $4,914).

The total annual cost burden for this information collection is estimated at $11,200 ($8,000 for the agreements + $3,200 for the financial statements = $11,200).

The following summarizes the Department's paperwork burden estimates for this information collection:

Type of Review: Revision of a currently approved collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Securities Lending Prohibited Transaction Exemption.

OMB Number: 1210–0065.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 200.

Frequency: On occasion.

Total Responses: 2,000.

Estimated Total Burden Hours: 434.

Estimated Burden Cost: $11,200.

Discussion of Comments Received

The Department received six comments regarding the proposed class exemption. The commenters requested specific modifications to the proposal in the following areas:

1. Definition of ''Foreign Broker-Dealer'' and ''Foreign Bank''

One commenter asked the Department to expand the definition of Foreign Broker-Dealers and Foreign Banks to include those foreign broker-dealers or foreign banks that are located in a foreign country in which a foreign broker-dealer or a foreign bank has received an individual exemption involving the lending of securities by plans. The commenter notes that, in each of these exemptions, the foreign

banks and foreign broker-dealers were under their country's governmental regulation and oversight, which provided a sufficient level of protection for plans. Another commenter asked the Department to expand relief to include broker-dealers and banks of Germany and the Netherlands within the definitions of Foreign Bank and Foreign Broker-Dealer. In the alternative, the commenter requested that relief be extended to broker-dealers and banks of Germany and the Netherlands, provided that the Lending Fiduciary is a U.S. Broker-Dealer or U.S. Bank and such fiduciary indemnifies the plan against losses that arise from a borrower's default. This commenter states that this type of indemnification agreement is present in most securities lending transactions.

The Department notes that the terms and conditions of the individual exemptions generally require that the foreign borrower be affiliated with a U.S. Bank or a U.S. Broker-Dealer that indemnifies the plan in the United States against potential loss resulting from a borrower's default. In addition, those exemptions require that the collateral be maintained in the United States in U.S. dollars or U.S. denominated securities. The Department notes that while these conditions were appropriate and protective of the plan in the context of an individual exemption, they may not be feasible in the context of a class exemption.[2] Thus, for purposes of the class exemption, it may be difficult for a plan to readily assess the risk of lending securities to broker-dealers and banks located in the various foreign jurisdictions. The Department believes that the presence of governmental regulation and oversight by the foreign countries that were involved in the individual exemptions, and an indemnification by a U.S. regulated entity, provide a significant degree of protection for plans. Accordingly, the Department has determined to expand the definition of Foreign Broker-Dealer (as defined in section V(c)) and Foreign Bank (as defined in section V(d)) under limited circumstances.

Under the final exemption, the definition of Foreign Broker-Dealer has been expanded to include those broker-dealers registered and regulated under the relevant securities laws of a governmental entity of a country other than the United States where such securities laws were applicable to a broker-dealer that received: (i) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities by a plan to a broker-dealer or (ii) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, (61 FR 39988 (July 31, 1996); 67 FR 44622 (July 3, 2002)) involving the loan of securities by a plan to a broker-dealer. The term ''Foreign Bank'' has been expanded to include those banks subject to regulation by the relevant governmental banking agency(ies) of a country other than the United States, where the regulation and oversight of these banking agencies were applicable to a bank that received: (i) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities by a plan to a bank or (ii) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, (61 FR 39988 (July 31, 1996); 67 FR 44622 (July 3, 2002)) involving the loan of securities by a plan to a bank.[3]

However, to further protect the plans from any unnecessary costs and risks associated with the lending of securities in the different foreign jurisdictions, a new condition has been added to section III(c) of the exemption. This condition requires, in the case of a securities lending transaction involving a Foreign Broker-Dealer or a Foreign Bank that is described above (as defined in section V(c)(2) and V(d)(2) of the exemption), the Lending Fiduciary to be a U.S. Bank or U.S. Broker-Dealer that indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the plan may incur or suffer directly arising out of a borrower default. In this regard, it is the Department's understanding that in a default situation, the plan will be able to recover the money it is owed under this indemnification agreement from the lending fiduciary in the United States.

Another commenter asked the Department to expand the definition of borrower to include Canadian broker-dealers and Canadian banks. The commenter described a strong similarity in the type of government oversight between broker-dealers and banks in Canada and the United States. In particular, the commenter described the regulation of Canadian broker-dealers. In Canada, securities regulation is within the jurisdiction of the Provinces. In Ontario, the Ontario Securities Commission (OSC) is responsible for regulating the securities markets with the purpose of protecting investors, ensuring optimal allocation of financial resources and maintaining public confidence in the markets. The OSC regulates market participants by notices and orders. It has an enforcement role in the market. It has the power to ensure that trading activities are carried out in accordance with applicable regulations. It can investigate, prosecute and impose penalties on individuals who do not comply with such regulations. Other provincial securities commissions operate similarly. All powers of all the commissions are subject to the oversight of the Ministers of Finance in each Province.

In addition, the commenter notes that the Canadian Securities Administration (CSA) reviews the activities of the provincial securities commissions to ensure consistency in the regulatory framework among the Provinces. The commenter adds that Canadian broker-dealers are subject to oversight by self-regulatory organizations (SRO's), which are subject to the supervision of the provincial commissions. According to the commenter, the Market Regulation Services is the independent regulation services provider for Canadian equity markets and is a recognized SRO by the CSA. Its mandate is to foster and protect investor confidence and market integrity through the administration, interpretation and enforcement of a

[2] The terms and conditions of the individual exemptions generally involve the lending of securities by a plan to a foreign affiliate of a U.S. broker-dealer or U.S. bank and require the U.S. affiliate to indemnify the plan in the United States against any potential losses arising from a default. In addition, these exemptions require that the collateral be maintained in U.S. dollars or U.S. denominated securities and be held in the U.S. The proposed class exemption did not contain an affiliate requirement and permitted non-U.S. forms of collateral that may be maintained outside the U.S.

[3] To date, individual exemptions have been granted and transactions have received final authorization under PTE 96–62, as amended, that involve securities loans by plans to broker-dealers and banks regulated under the applicable laws of Japan, Germany, the Netherlands, Sweden, Switzerland, France, Australia, Canada and the United Kingdom. Thus, any broker-dealer or bank that is subject to government regulation in any one of these countries would be able to utilize the relief provided in this exemption, if all applicable conditions are met. In this regard, if in the future, the Department grants individual exemptions or final authorizations under PTE 96–62 for transactions involving securities loans by plans to broker-dealers or banks regulated under the applicable laws of additional foreign countries, broker-dealers and banks subject to such government regulation would be able to utilize the final exemption provided all applicable conditions are met.

common set of market integrity principles.

The commenter also described the regulation of Canadian banks. The commenter noted that the Office of Superintendent of Financial Institutions (OSFI) regulates Canadian banks. OSFI is an independent agency of the Government of Canada and reports to the Minister of Finance. Its principal role is to safeguard depositors and other banking clients. OSFI imposes capital requirements to ensure that Canadian banks are able to meet their financial obligations as well as strict reporting, managing, accounting and auditing requirements.

Lastly, the commenter represented that under Canadian law, counterparties may agree to submit to the jurisdiction of the courts of the United States and the judgments of the courts in the United States are readily enforceable in Canada. Based on the representations of the commenter regarding the regulatory supervision of Canadian broker-dealers and banks, the Department has expanded the definition of ''Foreign Broker-Dealer'' to include any broker-dealer that: (i) Is regulated by a securities commission of a Province of Canada that is a ''member'' of the Canadian Securities Administration, and (ii) is subject to the oversight of a Canadian SRO; and has expanded the definition of ''Foreign Bank'' to include any bank that is regulated by the Office of the Superintendent of Financial Institutions in Canada.

Finally, one commenter requested that plans be permitted to loan securities to entities other than those permitted under the proposed exemption, provided that all obligations of the borrower are fully guaranteed by an entity that could have borrowed the securities itself. To the extent the commenter is referring to entities other than broker-dealers and banks for which the Department has previously granted relief, this comment raises issues that are beyond the scope of our original consideration, and the commenter has not provided sufficient information for the Department to consider this request. Accordingly, the Department has determined not to adopt this comment.

2. Level of Foreign Collateral That Must Be Pledged

One commenter expressed support for the collateral requirements found in the proposed exemption. Three commenters (including the Applicant) requested that the collateralization requirements (described in section II(b) of the proposed exemption) be made consistent with those in SEC Rule 15c3–3 (17 CFR 240.15c3–3).[4] The Applicant states that regulatory and market developments have occurred since the Applicant first filed its exemption application. The Applicant expressed concern that, if the exemption requires different collateralization levels for plans than what is required for other investors by Rule 15c3–3, plans would be placed at a competitive disadvantage. Another commenter suggested that the level of collateralization required in SEC Rule 15c3–3 be required for those transactions in which the lending fiduciary is a U.S. Bank and such lending fiduciary indemnifies the plan against losses resulting from the borrower's default. According to the commenter, most securities lending transactions include these types of indemnification arrangements. Lastly, a commenter suggested that the collateralization requirements stated in the proposed exemption only be modified for those transactions involving plans with total assets in excess of $500 million.

Rule 15c3–3 requires 100% collateralization if the collateral and securities are denominated in the same currency; 101% if the collateral and securities are denominated in a different currency (*i.e.*, Euros, British pounds, Swiss francs, Canadian dollars, and Japanese yen); and 105% if the collateral and securities are denominated in a different currency and such currency is other than those specified above.

On the basis of the comments, the Department has determined to adopt the collateralization requirements in Rule 15c3–3 for certain transactions where the lending fiduciary is a U.S. Broker-Dealer or U.S. Bank, and such fiduciary indemnifies the plan against loss in the event of borrower default.

Specifically, the Department has expanded section II(b) of the exemption to provide that: In the case of a securities lending transaction in which the Lending Fiduciary is a U.S. Bank or U.S. Broker-Dealer, and such Lending Fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default, the plan receives from the borrower by the close of the Lending Fiduciary's business on the day in which the securities lent are delivered to the borrower: ''Foreign Collateral'' having, as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than: (i) 100 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) on which the securities are primarily traded if the collateral posted is denominated in the same currency as the securities lent; or (ii) 101 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) on which the securities are primarily traded if the collateral posted is in a different currency than the securities lent and such currency is denominated in Euros, British pounds, Japanese yen, Swiss francs or Canadian dollars; or (iii) 105 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) if the collateral posted is in a different currency than the securities lent and is denominated in a currency other than those specified above.

Lastly, the Department believes that the Lending Fiduciary indemnification requirement discussed above provides a sufficient safeguard to protect a plan's interest under the revised collateralization levels making the $500 million plan asset test unnecessary. Accordingly, the Department has not modified the exemption in this respect.

3. Expand The Types of Collateral Permitted Under The Exemption

Several commenters requested that the class exemption permit plans to accept the types of collateral permitted under SEC Rule 15c3–3. Another commenter requested that the definition of foreign collateral be broadened to include equity securities and fixed income securities.

Rule 15c3–3 permits the following forms of collateral:

1. Government securities as defined in section 3(42)(A) and (B) of the Securities Exchange Act of 1934 (the Exchange Act) (15 U.S.C. 78c(42)(A) and (B)) may be pledged when borrowing any securities.

2. Government securities as defined in section 3(42)(C) of the Exchange Act (15 U.S.C. 78c(42)(C)) and issued or guaranteed as to principal or interest by the following corporations may be pledged when borrowing any securities: (i) Federal Home Loan Mortgage Corporation, (ii) the Federal

[4] On April 16, 2003, the SEC issued the Order Regarding the Collateral Broker-Dealers Must Pledge When Borrowing Customer Securities (Release No. 47683). Rule 15c3–3 specifies the types and amount of collateral that may be offered by broker-dealers who borrow fully paid and excess margin securities from customers. For purposes of this exemption, the term ''Rule 15c3–3'' shall also refer to the SEC Order contained in Release No. 47683.

National Mortgage Corporation, (iii) the Student Loan Marketing Association and (iv) the Financing Corporation.

3. Securities issued by, or guaranteed as to principal and interest by, the following Multinational Banks—the obligations of which are backed by participating countries, including the United States—may be pledged when borrowing any securities: (i) International Bank for Reconstruction and Development, (ii) the Inter-American Development Bank, (iii) the Asian Development Bank, (iv) the African Development Bank, (v) the European Bank for Reconstruction and Development, and (vi) the International Finance Corporation.

4. Mortgage-backed securities that meet the definition of a ''mortgage related security'' as defined by section 3(a)(41) of the Exchange Act (15 U.S.C. 78c(a)(41)) may be pledged when borrowing any securities.

5. Negotiable certificates of deposit and bankers acceptances issued by a ''bank'' as that term is defined in section 3(a)(6) of the Exchange Act (15 U.S.C. 78c(a)(6)), and which are payable in the United States and deemed to have a ''ready market'' as that term is defined in 17 CFR 240.15c3–1, may be pledged when borrowing any securities.

6. Foreign sovereign debt securities may be pledged when borrowing any securities, provided that: (i) At least one nationally recognized statistical rating agency (NRSRO) has rated in one of its two highest rating categories either the issue, the issuer or guarantor, or other outstanding unsecured long-term debt securities issued or guaranteed by the issuer or guarantor; and (ii) if the securities pledged are denominated in a different currency than those borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirements in paragraph (b)(3) of Rule 15c3–3 (100%) by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.

7. Foreign sovereign debt securities that do not meet the NRSRO rating condition set forth in Item 6 above may be pledged only when borrowing non-equity securities issued by a person organized or incorporated in the same jurisdiction (including other debt securities issued by the foreign sovereign); provided that, if such foreign sovereign debt securities have been assigned a rating lower than the securities borrowed, such foreign sovereign debt securities must be rated in one of the four highest rating categories by at least one NRSRO. If the securities pledged are denominated in a different currency than those borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of Rule 15c3–3 by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.

8. The Euro, British pound, Swiss franc, Canadian dollar or Japanese yen may be pledged when borrowing any securities, provided that, when the securities borrowed are denominated in a different currency than that pledged, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of Rule 15c3–3 by 1%. Any other foreign currency may be pledged when borrowing any non-equity securities denominated in the same currency.

9. Non-governmental debt securities may be pledged when borrowing any securities, provided that, in the relevant cash market they are not traded flat or in default as to principal or interest, and are rated in one of the two highest rating categories by at least one NRSRO. If such securities are not denominated in U.S. dollars or in the currency of the securities being borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of Rule 15c3–3 by 1% when the securities pledged are denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when they are denominated in any other currency.

The Department agrees with the commenters that the types of the collateral allowed under the class exemption should be expanded. Although the SEC concluded that the designation of additional categories of permissible collateral will add liquidity to the securities lending market and lower borrowing costs for broker-dealers, the Department does not believe that the commenters have made a sufficient showing that adopting all the categories of collateral described in Rule 15c3–3 would be protective of the interests of participants and beneficiaries if a borrower were to default.

In this regard, the Department notes that the collateral described in categories 1 and 2 of Rule 15c3–3 satisfies the definition of ''U.S. Collateral'' under the proposed exemption. For the sake of clarity, the Department has revised the definition of ''U.S. Collateral'' to specifically include: Government securities as defined in section 3(42)(A) and (B) of the Securities Exchange Act of 1934 (the Exchange Act); and Government securities as defined in section 3(42)(C) of the Exchange Act and issued or guaranteed as to principal or interest by the following corporations: (i) Federal Home Loan Mortgage Corporation, (ii) the Federal National Mortgage Corporation, (iii) the Student Loan Marketing Association and (iv) the Financing Corporation.

Additionally, the Department believes that it would be appropriate to expand the definition of ''U.S. Collateral'' to include: ''Mortgage-backed securities'' as described in category 4 of Rule 15c3–3, and ''negotiable certificates of deposit and banker acceptances'' as described in category 5 of Rule 15c3–3.

Further, the Department has determined that it would be appropriate to expand the definition of ''Foreign Collateral'' to include all other types of collateral that are specified under Rule 15c3–3, as amended by the SEC from time to time, provided the Lending Fiduciary is a U.S. Broker-Dealer or U.S. Bank, and such entity provides the plan with an indemnification with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs which a plan may incur or suffer directly arising out of a borrower default. In the absence of an indemnification by a U.S. Broker-Dealer or U.S. Bank, the definition of ''Foreign Collateral'' in the final exemption has been revised to include the types of collateral described in categories 3 of Rule 15c3–3, rated foreign sovereign debt described in category 6, and the British pound, the Canadian dollar, the Swiss franc, the Japanese yen or the Euro.

In response to a comment, the Department has determined not to revise the exemption to include equity securities and fixed-income securities as these items appear to be outside the scope of Rule 15c3–3, and the Department has insufficient information about how these items would function as collateral.

4. Issues Relating to the Lending Fiduciary's Indemnification of the Plan From Loss Upon a Borrower's Default

Two commenters requested that the Department revise the indemnification provision of section III(b) to limit the lending fiduciary's indemnification obligation to losses resulting from a borrower's default, and not from any shortfall in the earnings on the collateral. The Department notes that the indemnification by the Lending Fiduciary is only applicable when the borrower defaults and there is a difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the plan may incur or suffer directly arising out of a borrower default. The indemnification requirement, under the proposal, was never intended to encompass losses arising out of the investment of the collateral by a Lending Fiduciary or other party. Accordingly, the Department has clarified section III(b)(2) of the exemption to reflect this intent.

Another commenter asked the Department to expand section III(b)(2) of the proposed exemption to permit a parent corporation (which may or may not be domiciled in the United States) of a U.S. subsidiary acting as a Lending Fiduciary to provide the indemnity in lieu of the Lending Fiduciary itself. The Department believes that this request raises issues that are beyond the scope of the proposed exemption and has determined not to modify the exemption as requested by the commenter.

One commenter requested clarification regarding the scope of the indemnification provisions under the exemption. Specifically, the commenter questioned whether, in accordance with the provisions in an indemnification agreement, a Lending Fiduciary can stand in the shoes of the plan, and seek recovery from the borrower. Nothing in the final exemption would preclude a Lending Fiduciary from entering into an indemnification agreement that permits the Lending Fiduciary to seek recovery against a defaulting borrower after the Lending Fiduciary has made the plan whole pursuant to the indemnification agreement.

5. Miscellaneous Comments

Another commenter questioned whether the exemption would apply to repurchase agreements (repos). The commenter states that in the context of securities loans that are structured and documented as repos, a Master Repurchase Agreement is utilized instead of a Master Securities Lending Agreement. Except for the difference in the form of the arrangement, such an agreement contains all of the same information and substantive requirements that would be found in a typical Master Securities Lending Agreement. The commenter indicates that the Master Repurchase Agreement contains terms and conditions that satisfy all of the substantive requirements of the exemption, including the requirement that the securities be returned at termination of the loan (*i.e.*, repurchase transaction) in consideration for the return of the cash, the requirement that any interest or dividends on the securities lent (*i.e.*, sold) be paid by the securities borrower (*i.e.*, the purchaser) to the securities lender (*i.e.*, the seller) as and when paid, and the requirement that the securities lender (*i.e.*, the seller) receive reasonable compensation for the loan of the securities (which may consist of the ability to retain investment earnings on the cash collateral in excess of a pre-specified rebate amount).

The Department notes that the exemption permits securities loans that are structured as repos, provided that all of the other terms and conditions of the exemption are otherwise met. For the sake of clarity, the Department has added a definition of the terms ''lending of securities'' or ''loan of securities'' to include securities loans that are structured as repurchase agreements, provided that all terms of the exemption are otherwise met (section V(l) of the exemption).

Another commenter expressed concern that the exemption prevents plans from lending certain fixed income securities when a plan accepts foreign collateral by requiring the collateralization level for foreign collateral to be determined by reference to the market value of the securities lent on a ''recognized securities exchange,'' or an ''automated trading system.'' (*See* section II(b)(1)(B) and II(b)(2)(B))) The commenter requests that market value be determined in the same manner as set out under the 2000 version of the Master Securities Loan Agreement which was jointly published by the commenter and the Securities Industry Association. The Department believes that the objective standard contained in the proposal is an important safeguard, and is not persuaded by the comment.

One commenter requested that the Department clarify section IV(c) of the proposal. Section IV(c) of the proposal requires that the compensation be reasonable and be paid to the Lending Fiduciary in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of securities lending transactions. The commenter was concerned that this provision could require that the aggregate compensation for all loans be reasonable. Thus, if one loan's compensation failed, then all loans would fail this condition. The Department intended that this condition apply on a loan-by-loan basis. Thus, the failure of one loan to meet this requirement would not cause all loans entered into pursuant to a master agreement to fail such requirement.

A commenter requested clarification on whether the exemption covers ''fee-for-hold'' arrangements. The commenter describes ''fee-for-holds'' as the following. The borrower pays a fee in exchange for the guaranteed availability of a particular security for a specified period of time or until the arrangement is terminated by either party. If a fee-for-hold arrangement is in place and the holding borrower chooses to borrow any such held securities, the fee-for-hold arrangement with respect to such securities terminates and the borrower will enter into a securities loan arrangement. These arrangements may take two forms: (1) The plan may grant the borrower the right of first refusal essentially giving the borrower an option to borrow the securities if the lending plan is approached by another party seeking to borrow the same held securities; or (2) the plan may grant the borrower the exclusive right to borrow the securities. The commenter stated that title to the securities does not transfer until securities are actually delivered. The borrower pays a fee related to the type, quantity and duration of the fee-for-hold arrangement. Once loaned, the lending fee paid is based on market conditions at the time of the loan. The plan may terminate the arrangement at any time so that it may dispose of the securities at any time. The Department is of the view that these arrangements are within the scope of the exemption, provided that all terms and conditions are otherwise met.

One commenter requested that relief be extended to transactions covered by the Federal Employee's Retirement System Act of 1986 (FERSA). The Department notes that relief from the prohibited transaction provisions of FERSA is provided for transactions described in section I(c) of the final amendment by reason of PTE T88–1, as amended (53 FR 52838 (December 29, 1988), 57 FR 8689 (March 11, 1992).) No additional exemptive relief is necessary under the final amendment for those prohibited transactions described in FERSA which parallel those described in section 406(a) of ERISA, if the plan receives no less than adequate consideration.

In this regard, PTE T88–1, as amended, adopted six prohibited transaction class exemptions (including PTE 82–63) for purposes of section 8477(c)(2) of FERSA. The amendment to PTE T88–1 extended such relief to any amendments of these class exemptions which are granted by the Department pursuant to section 408(a) of ERISA unless the Department determines that PTE T88–1, as amended does not apply to such amendment. Accordingly, the Department determines that PTE T88–1, as amended shall apply to this final amendment for purposes of FERSA.

One commenter noted that the requirements in section II(d) that the loan agreement identify the currency in which payment of any fees will be made to the plan would be burdensome. The commenter noted that, in the context of securities loans secured by cash collateral, it is industry practice that the lender pays a rebate to the borrower rather than receiving a fee. Secondly, it is industry practice that the borrower's rebate will be in the same currency as

the currency of the cash collateral. In addition, many loans are covered by a master agreement and, in the context of a securities loan secured by non-cash collateral, parties may need to offer different forms of collateral on a loan-by-loan basis. Thus, the commenter requests that the parties be permitted to specify the currency of the fees in the loan confirmation. The Department concurs with the comment, and has modified the final exemption accordingly.

A commenter asked the Department to clarify how the final exemption would apply to securities loans that were entered into pursuant to PTEs 81–6 and 82–63 prior to the effective date of the final exemption. The Department notes that loan transactions entered into prior to the effective date of this exemption would be covered by PTE 81–6 and PTE 82–63, provided all conditions of the exemption are met. Transactions entered into on or after the effective date of the final exemption would be covered by this exemption, provided that the conditions therein are met. The Department notes that the conditions of PTE 81–6 and PTE 82–63 have been incorporated into this class exemption.

Description of the Exemption

Section I of the exemption describes the transactions that are covered by the exemption. Section I(a) tracks the language of PTE 81–6 by permitting the lending of securities that are assets of an employee benefit plan to a U.S. Broker-Dealer or U.S. Bank, if the general conditions set forth in section II are met. However, the conditions contained in PTE 81–6 have been amended to permit additional types of collateral to be used for the securities loan. Section I(b) of the exemption expands PTE 81–6 by permitting the lending of securities that are assets of an employee benefit plan to a Foreign Broker-Dealer or a Foreign Bank. A Foreign Broker-Dealer or a Foreign Bank must meet both the general conditions set forth in section II of the proposed exemption, as well as the specific conditions described in section III.

Under the final exemption, a Foreign Broker-Dealer is defined in section V(c) as a broker-dealer that has, as of the last day of its most recent fiscal year, equity capital that is the equivalent of no less than $200 million and is: (1)(i) Registered and regulated under the laws of the Financial Services Authority in the United Kingdom, or (ii)(a) registered and regulated under the laws of a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and (b) is subject to the oversight of a Canadian self-regulatory authority; or (2) registered and regulated, under the relevant securities laws of a governmental entity of a country other than the United States, and such securities laws and regulation were applicable to a broker-dealer that received: (i) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities by a plan to a broker-dealer or (ii) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended involving the loan of securities by a plan to a broker-dealer.

Section V(d) of the final exemption defines the term ''Foreign Bank'' to mean: An institution that has, substantially similar powers to a bank as defined in section 202(a)(2) of the Investment Advisers Act, has as of the last day of its most recent fiscal year, equity capital which is the equivalent of no less than $200 million, and is subject to: (1) Regulation by the Financial Services Authority in the United Kingdom or the Office of the Superintendent of Financial Institutions in Canada, or (2) regulation by the relevant governmental banking agency(ies) of a country other than the United States, and the regulation and oversight of these banking agencies were applicable to a bank that received: (i) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities by a plan to a bank or (ii) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended involving the loan of securities by a plan to a bank.

Section I(c) permits the payment to a lending fiduciary of compensation for services rendered in connection with loans of plan assets that are securities, provided that the conditions set forth in section IV are met. The conditions found in section IV mirror the conditions that were found in PTE 82–63. Although the relief provided by section I(c) would apply to a broader range of lending activities, no changes have been made with respect to any of the conditions that are contained in PTE 82–63.

Section II(a) of the final exemption remains as proposed and requires that neither the borrower nor any affiliate of the borrower have or exercise discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Under the final exemption, section II(b)requires that the plan receive from the borrower by the close of the Lending Fiduciary's business on the day in which the securities lent are delivered to the borrower, (1) ''U.S. Collateral'' having, as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than 100 percent of the then market value of the securities lent; or (2) ''Foreign Collateral'' having as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than: (i) 102 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) on which the securities are primarily traded if the collateral posted is denominated in the same currency as the securities lent, or(ii) 105 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in V(k)) on which the securities are primarily traded if the collateral posted is denominated in a different currency than the securities.

In addition, section II(b) has been expanded to include new collateralization requirements in the case of a securities lending transaction in which the Lending Fiduciary is a U.S. Bank or U.S. Broker-Dealer, and such Lending Fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default. For those securities transactions involving such an indemnification, the plan may receive from the borrower by the close of the Lending Fiduciary's business on the day in which the securities lent are delivered to the borrower: Foreign Collateral having, as of the close of business on the preceding day, a market value or in the case of bank letters of credit, a stated amount, equal to not less than:

(i) 100 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) on which the securities are primarily traded if the collateral posted is denominated in the same currency as the securities lent; or (ii) 101 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined

in section V(k)) on which the securities are primarily traded if the collateral posted is in a different currency than the securities lent and such currency is denominated in Euros, British pounds, Japanese yen, Swiss francs or Canadian dollars; or (iii) 105 percent of the then market value of the securities lent as valued on a recognized securities exchange or an automated trading system (as defined in section V(k)) if the collateral posted is in a different currency than the securities lent and is denominated in a currency other than those specified above.[5]

The final exemption contains a revised definition of ''U.S. Collateral'' that incorporates additional forms of collateral described in Rule 15c3–3. The term ''U.S. Collateral'' is defined in section V(e) as:

(1) U.S. currency,

(2) ''government securities'' as defined in section 3(a)(42)(A) and (B) of the Securities Exchange Act of 1934 (the Exchange Act),

(3) ''government securities'' as defined in section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations: The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association and the Financing Corporation,

(4) mortgage-backed securities meeting the definition of a ''mortgage related security'' set forth in section 3(a)(41) of the Exchange Act,

(5) negotiable certificates of deposit and bankers' acceptances issued by a ''bank'' as that term is defined in section 3(a)(6) of the Exchange Act, and which are payable in the United States and deemed to have a ''ready market'' as that term is defined in 17 CFR 240.15c3–1, or

(6) irrevocable letters of credit issued by a U.S. Bank other than the borrower or an affiliate thereof, or any combination thereof.

The final exemption contains a revised definition of ''Foreign Collateral'' that permits U.S. Banks, U.S. Broker-Dealers, Foreign Banks and Foreign Broker-Dealers to accept a broader range of collateral. The term ''Foreign Collateral'' is defined in section V(f) as:

(1) Securities issued by or guaranteed as to principal and interest by the following Multilateral Development Banks—the obligations of which are backed by the participating countries, including the United States: The International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the International Finance Corporation.

(2) Foreign sovereign debt securities provided that at least one nationally recognized statistical rating organization has rated in one of its two highest categories either the issue, the issuer or guarantor;

(3) the British pound, Canadian dollar, Swiss franc, Japanese yen or the Euro;

(4) irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization; or

(5) any type of collateral described in Rule 15c3–3 of the Exchange Act, as amended from time to time, provided that the lending fiduciary is a U.S. Bank or U.S. Broker-Dealer and such fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs which a plan may incur or suffer directly arising out of a borrower default.

The Department notes that section II(c) of the exemption remains unchanged from the proposal and requires that plans receive collateral from borrowers by physical delivery, by wire transfer or by book entry in a securities depository located in the United States. For borrowers that are Foreign Banks and Foreign Broker-Dealers, the exemption requires that the plan receive either collateral by physical delivery, by wire entry or by book entry in a securities depository located in the United States or held on behalf of the plan at an Eligible Securities Depository as defined in section V(i)of the exemption.

Section II(d) of the exemption has been modified in light of the expanded definition of ''Foreign Broker-Dealer'' and ''Foreign Bank.'' That section requires that the borrower furnish the Lending Fiduciary with its most recent available audited statement of the borrower's financial condition, as audited by a United States certified public accounting firm or in the case of a borrower that is a Foreign Broker-Dealer or Foreign Bank, a firm which is eligible or authorized to issue audited financial statements in conformity with accounting principles generally accepted in the primary jurisdiction that governs the borrowing Foreign Broker-Dealer or Foreign Bank.

Under section II(e) of the exemption, the loan must be made pursuant to a written loan agreement. Section II(e) further requires that the securities lending agreement must give the plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral received by the plan. In section (f) of the exemption, the plan may receive a reasonable fee in connection with the securities loan or have the opportunity to derive compensation through the investment of the currency collateral. The plan may pay a loan rebate or similar fee to the borrower where the plan invests the currency collateral.

Section II(g) of the exemption requires that the fees and other consideration received by the plan in connection with the loan of securities must be reasonable. The identity of the currency in which payment of fees and rebates will be made must be disclosed to the plan either in the written loan agreement or the loan confirmation as agreed to by the borrower and the plan (or Lending Fiduciary) prior to the making of the loan.

Under the exemption, section II(h) requires that the plan receive the equivalent of all distributions made to holders of the borrower securities during the term of the loan including, but not limited to, dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities. Section II(i) requires that, if the market value of the collateral at the close of trading on a business day is less than the applicable percentage of the market value of the borrowed securities at the close of trading on that day, then the borrower shall deliver, by the close of business on the following business day, an additional amount of U.S. Collateral or Foreign Collateral, the market value of which, together with the market value of all previously delivered collateral, equals at least the applicable percentage of the market value of all borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the U.S. Collateral or Foreign Collateral may be returned to the borrower if the market value of the collateral exceeds the applicable percentage described in this exemption as long as the market value of the remaining collateral equals the applicable percentage described in the exemption of the market value of the borrowed securities.

Under section II(j) of the exemption, a plan may terminate a loan at any time. Section II(k) of the exemption permits a plan to purchase securities identical to the loaned securities if the borrower does not return the loaned securities, and obligates the borrower to pay to the plan any amount of remaining obligation and expenses not covered by the collateral. Section II(l) of the

[5] The Department notes that this requirement would not preclude the Lending Fiduciary from requiring additional collateral should the circumstances so warrant.

exemption states that if a borrower fails to comply with any provision of a loan agreement which requires compliance with this exemption, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of ERISA solely by reason of the borrower's failure to comply with the conditions of the exemption.

Section III of the exemption contains conditions that are applicable to securities lending transactions with Foreign Broker-Dealers and Foreign Banks. Section III(a) requires that the lending fiduciary maintain the situs of the loan agreement in accordance with the indicia of ownership requirements under section 404(b) of ERISA and the regulations promulgated under 29 CFR 2550.404(b)-1. Further, section III(b) requires that a foreign borrower agree to submit to the jurisdiction of the district courts of the United States, and agree that the plan may in its sole discretion enforce the agreement in a U.S. court. It is the Department's understanding that in the event the borrower were to default, the plan would be able to secure a judgment in the United States which would be enforceable in a UK or a Canadian court. As an alternative to the requirement that the Foreign Broker-Dealer or Foreign Bank must agree to submit to the jurisdiction of the United States courts, the lending fiduciary may, if a U.S. Bank or U.S. Broker-Dealer, indemnify the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction cost incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under the exemption) which the plan may incur or suffer directly arising out of a borrower's default.

The final exemption contains a new condition in section III(c) which requires that in the case of a securities lending transaction involving a Foreign Broker-Dealer or a Foreign Bank that is described in section V(c)(2) or V(d)(2), the Lending Fiduciary must be a U.S. Bank or U.S. Broker-Dealer and prior to entering into the loan transaction, such fiduciary must agree to indemnify the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the plan may incur or suffer directly arising out of a borrower default. It is the Department's understanding that, in the event of a borrower default, the plan would be able to recover from the lending fiduciary, in the United States, the amount it is entitled to under the indemnification agreement.

As in the proposal, section IV of the exemption incorporates the conditions of PTE 82–63. Section V of the exemption contains the definitions. Unless noted above, the definitions of the exemption remain as they were in the proposed exemption.

The Department has added section VI that specifies the effective dates of the final exemption and the revocation of PTEs 81–6 and 82–63.

Lastly, the Department notes that section 611(d)(1) of the Pension Protection Act of 2006 (Pub. L. 109–280) (the PPA) amended the Employee Retirement Income Security Act of 1974 (ERISA) in part, by adding a new section 408(b)(17) which provides relief from ERISA section 406(a)(1)(A), (B) and (D) for any transaction between a plan and a person that is a party in interest other than fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of section 3(21)(A)(ii)) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider described in ERISA section 3(14)(F), (G), (H) or (I), or both, but only if in connection with such transaction the plan receives no less, nor pays more, than adequate consideration.[6] The Department notes that to the extent that a transaction involving a loan of securities by a plan to a party in interest meets the requirements of ERISA section 408(b)(17), such transaction does not need to comply with the terms of this class exemption. The Department further notes that the new section 408(b)(17) will not be available for the payment of compensation to a plan's securities lending agent. In this regard, see 408(b)(2) of ERISA and section I(c) of this final exemption for relief permitting the payment of compensation related to foreign securities lending services.

[6] Section 611(d)(2) of the PPA provided similar exemptive relief in amending section 4975 of the Code to add the new section 4975(c)(20).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, and based on the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plan(s) and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan;

(3) This exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

I. Transactions

(a) Effective January 2, 2007, the restrictions of section 406(a)(1)(A) through (D) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan to a ''U.S. Broker-Dealer'' or to a ''U.S. Bank,'' provided that the conditions set forth in section II below are met.

(b) Effective January 2, 2007, the restrictions of section 406(a)(1)(A) through (D) of ERISA and the taxes imposed by section 4975(a) and (b) of

the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan to a ''Foreign Broker-Dealer'' or ''Foreign Bank'', provided that the conditions set forth in sections II and III below are met.

(c) Effective January 2, 2007, the restrictions of section 406(b)(1) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to the payment to a fiduciary (the Lending Fiduciary) of compensation for services rendered in connection with loans of plan assets that are securities, provided that the conditions set forth in section IV below are met.

II. General Conditions For Transactions Described in Sections I(a) and I(b)

(a) Neither the borrower nor any affiliate of the borrower has or exercises discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(b) The plan receives from the borrower by the close of the Lending Fiduciary's business on the day in which the securities lent are delivered to the borrower, (1) ''U.S. Collateral'' having, as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than 100 percent of the then market value of the securities lent; or

(2) ''Foreign Collateral'' having as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than:

(i) 102 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) on which the securities are primarily traded if the collateral posted is denominated in the same currency as the securities lent, or

(ii) 105 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in V(k)) on which the securities are primarily traded if the collateral posted is denominated in a different currency than the securities lent.

Notwithstanding the foregoing, if the Lending Fiduciary is a U.S. Bank or U.S. Broker-Dealer, and such Lending Fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default, the plan receives from the borrower by the close of the Lending Fiduciary's business on the day in which the securities lent are delivered to the borrower, ''Foreign Collateral'' having as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than:

(i) 100 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) on which the securities are primarily traded if the collateral posted is denominated in the same currency as the securities lent; or

(ii) 101 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in V(k)) on which the securities are primarily traded if the collateral posted is denominated in a different currency than the securities lent and such currency is denominated in Euros, British pounds, Japanese yen, Swiss francs or Canadian dollars; or

(iii) 105 percent of the then market value of the securities lent as valued on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in V(k)) if the collateral posted is denominated in a different currency than the securities lent and such currency is other than those specified above.

(c)(1) If the borrower is a U.S. Bank or U.S. Broker-Dealer, the Plan receives such U.S. Collateral or Foreign Collateral from the borrower by the close of the Lending Fiduciary's business on the day in which the securities are delivered to the borrower. Such collateral is received by the plan either by physical delivery, wire transfer or by book entry in a securities depository located in the United States. or,

(2) If the borrower is a Foreign Bank or Foreign Broker-Dealer, the plan receives U.S. Collateral or Foreign Collateral from the borrower by the close of the Lending Fiduciary's business on the day in which the securities are delivered to the borrower. Such collateral is received by the plan either by physical delivery, wire transfer or by book entry in a securities depository located in the United States or held on behalf of the plan at an Eligible Securities Depository. The indicia of ownership of such collateral shall be maintained in accordance with section 404(b) of ERISA and 29 CFR 2550.404b–1.

(d) Prior to making of any such loan, the borrower shall have furnished the Lending Fiduciary with:

(1) The most recent available audited statement of the borrower's financial condition, as audited by a United States certified public accounting firm or in the case of a borrower that is a Foreign Broker-Dealer or Foreign Bank, a firm which is eligible or authorized to issue audited financial statements in conformity with accounting principles generally accepted in the primary jurisdiction that governs the borrowing Foreign Broker-Dealer or Foreign Bank;

(2) The most recent available unaudited statement of its financial condition (if the unaudited statement is more recent than such audited financial statement); and

(3) A representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the Lending Fiduciary. Such representations may be made by the borrower's agreement that each loan shall constitute a representation by the borrower that there has been no such material adverse change.

(e) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as an arm's-length transaction with an unrelated party would be. Such loan agreement states that the plan has a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral. Such agreement may be in the form of a master agreement covering a series of securities lending transactions.

(f) In return for lending securities, the plan:

(1) Receives a reasonable fee (in connection with the securities lending transaction), and/or

(2) Has the opportunity to derive compensation through the investment of the currency collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party.

(g) All fees and other consideration received by the plan in connection with the loan of securities are reasonable. The identity of the currency in which the payment of fees and rebates will be made shall be disclosed to the plan either in the written loan agreement or the loan confirmation as agreed to by the borrower and the plan (or Lending Fiduciary) prior to the making of the loan.

(h) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan including, but not limited to, dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

(i) If the market value of the collateral at the close of trading on a business day is less than the applicable percentage of the market value of the borrowed

securities at the close of trading on that day (as described in section II(b) of this exemption), then the borrower shall deliver, by the close of business on the following business day, an additional amount of U.S. Collateral or Foreign Collateral the market value of which, together with the market value of all previously delivered collateral, equals at least the applicable percentage of the market value of all the borrowed securities as of such preceding day.

Notwithstanding the foregoing, part of the U.S. Collateral or Foreign Collateral may be returned to the borrower if the market value of the collateral exceeds the applicable percentage (described in section II(b)) of the exemption) of the market value of the borrowed securities, as long as the market value of the remaining U.S. Collateral or Foreign Collateral equals at least the applicable percentage of the market value of the borrowed securities;

(j) The loan may be terminated by the plan at any time, whereupon the borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within the lesser of:

(1) The customary delivery period for such securities,

(2) Five business days, or

(3) The time negotiated for such delivery by the plan and the borrower.

(k) In the event that the loan is terminated, and the borrower fails to return the borrowed securities or the equivalent thereof within the applicable time described in section II(j) above, the plan may, under the terms of the loan agreement:

(1) Purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and

(2) The borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan the amount of any remaining obligations and expenses not covered by the collateral, including reasonable attorney's fees incurred by the plan for legal action arising out of default on the loans, plus interest at a reasonable rate.

Notwithstanding the foregoing, the borrower may, in the event the borrower fails to return borrowed securities as described above, replace collateral, other than U.S. currency, with an amount of U.S. currency that is not less than the then current market value of the collateral, provided such replacement is approved by the Lending Fiduciary.

(l) If the borrower fails to comply with any provision of a loan agreement which requires compliance with this exemption, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of ERISA solely by reason of the borrower's failure to comply with the conditions of the exemption.

III. Specific Conditions For Transactions Described in Section I(b)

(a) The Lending Fiduciary maintains the written documentation for the loan agreement at a site within the jurisdiction of the courts of the United States.

(b) Prior to entering into a transaction involving a Foreign Broker-Dealer that is described in section V(c)(1) or a Foreign Bank that is described in section V(d)(1) either:

(1) The Foreign Broker-Dealer or Foreign Bank agrees to submit to the jurisdiction of the United States; agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); consents to service of process on the Process Agent; and agrees that any enforcement by a plan of its rights under the securities lending agreement will, at the option of the plan, occur exclusively in the United States courts; or

(2) The Lending Fiduciary, if a U.S. Bank or U.S. Broker-Dealer, agrees to indemnify the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the plan may incur or suffer directly arising out of a borrower default by the Foreign Broker-Dealer or Foreign Bank.

(c) In the case of a securities lending transaction involving a Foreign Broker-Dealer that is described in section V(c)(2) or a Foreign Bank that is described in section V(d)(2), the Lending Fiduciary must be a U.S. Bank or U.S. Broker-Dealer, and prior to entering into the loan transaction, such fiduciary must agree to indemnify the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the plan may incur or suffer directly arising out of a borrower default by the Foreign Broker-Dealer or Foreign Bank.

IV. Specific Conditions for Transactions Described in Section I(c)

(a) The loan of securities is not prohibited by section 406(a) of ERISA or otherwise satisfies the conditions of this exemption.

(b) The Lending Fiduciary is authorized to engage in securities lending transactions on behalf of the plan.

(c) The compensation is reasonable and is paid in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of securities lending transactions.

(d) Except as otherwise provided in section IV(f), the arrangement under which the compensation is paid:

(1) Is subject to the prior written authorization of a plan fiduciary (the ''authorizing fiduciary''), who is (other than in the case of a plan covering only employees of the Lending Fiduciary or any affiliates of such fiduciary) independent of the Lending Fiduciary and of any affiliate thereof, and

(2) May be terminated by the authorizing fiduciary within:

(A) The time negotiated for such notice of termination by the plan and the Lending Fiduciary, or

(B) five business days, whichever is less, in either case without penalty to the plan.

(e) No such authorization is made or renewed unless the Lending Fiduciary shall have furnished the authorizing fiduciary with any reasonably available information which the Lending Fiduciary reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request.

(f) (Special Rule for Commingled Investment Funds) In the case of a pooled separate account maintained by an insurance company qualified to do business in a State or a common or collective trust fund maintained by a bank or trust company supervised by a State or Federal agency, the requirements of section IV(d) of this exemption shall not apply, provided that:

(1) The information described in section IV(e) (including information with respect to any material change in the arrangement) shall be furnished by the Lending Fiduciary to the authorizing fiduciary described in section IV(d) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary;

(2) In the event any such authorizing fiduciary submits a notice in writing to the Lending Fiduciary objecting to the implementation of, material change in, or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the account or fund subsequent to the implementation of the compensation arrangement and which has not authorized the arrangement in the manner described in sections IV(f)(1) and IV(f)(2), the plan's investment in the account or fund shall be authorized in the manner described in section IV(d)(1).

V. Definitions

For purposes of this exemption:

(a) The term ''U.S. Broker-Dealer'' means a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act or the Exchange Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the 1934 Act).

(b) The term ''U.S. Bank'' means a bank as defined in section 202(a)(2) of the Investment Advisers Act.

(c) The term ''Foreign Broker-Dealer'' means a broker-dealer that has, as of the last day of its most recent fiscal year, equity capital that is equivalent of no less than $200 million and is:

(1) (i) Registered and regulated under the laws of the Financial Services Authority in the United Kingdom, or

(ii)(a) registered and regulated by a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and (b) is subject to the oversight of a Canadian self-regulatory authority; or

(2) registered and regulated under the relevant securities laws of a governmental entity of a country other than the United States, and such securities laws and regulation were applicable to a broker-dealer that received: (i) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities by a plan to a broker-dealer or (ii) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, involving the loan of securities by a plan to a broker-dealer.

(d) The term ''Foreign Bank'' means an institution that has substantially similar powers to a bank as defined in section 202(a)(2) of the Investment Advisers Act, has as of the last day of its most recent fiscal year, equity capital which is equivalent of no less than $200 million, and is subject to:

(1) Regulation by the Financial Services Authority in the United Kingdom or the Office of the Superintendent of Financial Institutions in Canada, or

(2) regulation by the relevant governmental banking agency(ies) of a country other than the United States, and the regulation and oversight of these banking agencies were applicable to a bank that received: (a) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of securities by a plan to a bank or (b) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, involving the loan of securities by a plan to a bank.

(e) The term ''U.S. Collateral'' means:

(1) U.S. currency;

(2) ''government securities'' as defined in section 3(a)(42)(A) and (B) of the Exchange Act;

(3) ''government securities'' as defined in section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations: The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association and the Financing Corporation

(4) mortgage-backed securities meeting the definition of a ''mortgage related security'' set forth in section 3(a)(41) of the Exchange Act;

(5) negotiable certificates of deposit and bankers acceptances issued by a ''bank'' as that term is defined in section 3(a)(6) of the Exchange Act, and which are payable in the United States and deemed to have a ''ready market'' as that term is defined in 17 CFR 240.15c3–1; or

(6) irrevocable letters of credit issued by a U.S. Bank other than the borrower or an affiliate thereof, or any combination, thereof.

(f) The term ''Foreign Collateral'' means:

(1) Securities issued by or guaranteed as to principal and interest by the following Multilateral Development Banks—the obligations of which are backed by the participating countries, including the United States: The International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the International Finance Corporation;

(2) foreign sovereign debt securities provided that at least one nationally recognized statistical rating organization has rated in one of its two highest categories either the issue, the issuer or guarantor;

(3) the British pound, the Canadian dollar, the Swiss franc, the Japanese yen or the Euro;

(4) irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization; or

(5) any type of collateral described in Rule 15c3–3 of the Exchange Act as amended from time to time provided that the lending fiduciary is a U.S. Bank or U.S. Broker-Dealer and such fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs which a plan may incur or suffer directly arising out of a borrower default. Notwithstanding the foregoing, collateral described in any of the categories enumerated in section V(e) will be considered U.S. Collateral for purposes of the exemption.

(g) The term ''affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of ERISA) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director, partner or employee.

(h) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) The term ''Eligible Securities Depository'' means an eligible securities depository as that term is defined under Rule 17f-7 of the Investment Company Act of 1940 [15 U.S.C. 80a], as such definition may be amended from time to time.

(j) The term ''recognized securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under section 6 of the Exchange Act of 1934 (15 U.S.C. 78f) or a designated offshore securities market as defined in Regulation S of the Securities Act of 1933 [17 CFR part 230.902(B)], as such definition may be amended from time to time, which performs with respect to securities, the functions commonly performed by a stock exchange within the meaning of the definitions under the applicable securities laws (*e.g.*, 17 CFR part 240.3b-16).

(k) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers such as an ''alternative trading system'' within the meaning of SEC's Reg. ATS [17 CFR part 242.300] as such definition may be amended from time to time, or an ''automated quotation system'' as described in section 3(a)(51)(A)(ii) of the Securities and Exchange Act of 1934 [15 U.S.C. 78c(a)(51)(A)(ii)].

(l) The term ''lending of securities'' or ''loan of securities'' shall include securities loans that are structured as repurchase agreements provided, that all terms of the exemption are otherwise met.

VI. Effective Dates

(a) This exemption is effective on January 2, 2007.

(b) PTEs 81–6 and 82–63 are revoked effective January 2, 2007.

Signed at Washington, DC, this 25th day of October, 2006.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E6–18238 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 2 through October 6, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

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.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,003; Central Products Co., Brighton, CO: September 1, 2005.

TA–W–60,084; Hekman Furniture Co., Grand Rapids, MI: September 13, 2005.

TA–W–60,177; Hooker Furniture Corp., Martinsville, VA: September 29, 2005.

TA–W–59,980; Mechanical Products Manufacturing, Co., Lucasville, OH: August 18, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,026; BSN–Jobst, Inc., Rutherford College, NC: September 6, 2005.
TA–W–60,085; Parker Hannifin Corp., Sarasota, FL: September 13, 2005.
TA–W–60,096; General Electric, Bloomington, IL: September 15, 2005.
TA–W–60,097; Eaton Corporation, Hutchinson, KS: September 13, 2005.
TA–W–60,136; Owens Brockway, Godfrey, IL: September 25, 2005.
TA–W–60,167; Andrew Corporation (AFMA), Amesbury, MA: September 26, 2005.
TA–W–59828; Pfizer, Inc., Kalamazoo, MI: July 27, 2005.
TA–W–60,069; Cooper Standard Automotive, Auburn, IN: September 8, 2005
TA–W–60,079; Allied Motion Technologies, Owosso, MI: September 13, 2005.
TA–W–60,095; Regal Electronics, Inc., Pocahontas, AR: September 15, 2005.
TA–W–60,130; AJS Controls, Inc., Sidney, NY: September 21, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,162; Ison Transport Inc., Ontonagon, MI.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59761; Ace Products, LLC, Conneautville, PA.
TA–W–59970; TDE Group, Inc., Somerset, KY.
TA–W–59989; Canam Metal Products, Inc., Colton, CA.
TA–W–60,056; Short Bark Industries, Tellico Plains, TN.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,993; Fenton Gift Shops, Inc., Williamstown, WV.
TA–W–60,045; International Business Machines Corp., Rocklin, CA.
TA–W–60,058; Akzo Nobel, Inc., Georgetown, SC.
TA–W–60,103; Xerox Corporation, Wilsonville, OR.
TA–W–60,154; Lucas Ford Lincoln Mercury, Southold, NY.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of October 2 through October 6, 2006. Copies of these determinations are available for inspection in Room C–5311, 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.

Dated: October 12, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18226 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,846]

Coville, Inc. Winston-Salem, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Coville, Inc., Winston-Salem, North Carolina. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,846; Coville, Inc., Winston-Salem, North Carolina, (October 18, 2006).

Signed at Washington, DC this 23rd day of October 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18218 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,627]

Liebert Corporation; Irvine, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Liebert Corporation, Irvine, California. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,627; Liebert Corporation, Irvine, California, (October 18, 2006).

Signed at Washington, DC this 23rd day of October 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18217 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,219]

Marathon Electric, a Subsidiary of Regal-Beloit Corporation; Lima, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2006 in response to a worker petition filed by an IUE–CWA Region 7 official on behalf of workers of Marathon Electric, a subsidiary of Regal-Beloit Corporation, Lima, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of October 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18215 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,715]

Salisbury Manufacturing Corporation, Mohican Mills, Salisbury, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 21, 2006, applicable to workers of Salisbury Manufacturing Corporation located in Salisbury, North Carolina. The notice was published in the **Federal Register** on September 13, 2006 (71 FR 54094–54096).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce airline blankets. The company informed the Department that some of the workers wages were reported to the Unemployment Insurance (UI) tax account for a sister company, Mohican Mills.

The intent of the certification is to provide coverage to all workers of the subject firm impacted by increased imports. Accordingly, the Department is amending the certification to include workers of Salisbury Manufacturing Corporation, Salisbury, North Carolina, whose wages are reported by Mohican Mills.

The amended notice applicable to TA–W–59,715 is hereby issued as follows:

''All workers of Salisbury Manufacturing Corporation, Mohican Mills, Salisbury, North Carolina, who became totally or partially separated from employment on or after June 28, 2005 through August 21, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 10th day of October, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18227 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,988]

Smith Die & Mold, Inc., Port Huron, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 31, 2006 in response to a petition filed by a company official on behalf of workers at Smith Die & Mold Inc., Port Huron, Michigan. The workers at the subject facility produce industrial molds used for injection molded plastic.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 10th day of October, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18228 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2006.

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 November 13, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of October 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 10/2/06 and 10/6/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60172	Sunshine Scholl Uniforms (Wkrs)	Medley, FL	10/02/06	09/27/06
60173	LeRocato Manufacturing, Inc. (State)	Plainfield, CT	10/02/06	09/29/06
60174	Tyson Frest Foods (Wkrs)	Wallula, WA	10/02/06	09/28/06
60175	Terrisol Corp. (Comp)	Troutman, NC	10/02/06	09/29/06
60176	Flextronics (Wkrs)	San Jose, CA	10/02/06	09/29/06
60177	Hooker Furniture Corp. (Comp)	Martinsville, VA	10/02/06	09/29/06
60178	Trafalga (State)	Norwalk, CT	10/02/06	09/29/06
60179	Tenneco—Napoleon (Union)	Napoleon, OH	10/02/06	10/02/06
60180	Cadence Innovation (State)	Chesterfield, MI	10/02/06	10/02/06
60181	Custom Fashions, Inc. (Comp)	Tupelo, MS	10/02/06	10/02/06
60182	Oak Lawn Packaging, Inc. (State)	Fort Smith, AR	10/03/06	10/02/06
60183	Signature Fruit Company, LLC (Union)	Modesto, CA	10/03/06	09/28/06
60184	Bellsouth Telecommunications (Wkrs)	Paducah, KY	10/03/06	10/02/06
60185	Southern Steel and Wire Co. (State)	Fort Smith, AR	10/03/06	10/02/06
60186	Deltak, LLC (State)	Plymouth, MN	10/03/06	10/02/06
60187	PCC Airfoils, LLC (Comp)	Douglas, GA	10/03/06	10/02/06
60188	Jackson furniture Industries (Comp)	Cleveland, TN	10/03/06	09/15/06
60189	Sebago/Wolverine (State)	Portland, ME	10/03/06	10/02/06
60190	Cooper Power Tools, Inc. (Union)	Dayton, OH	10/03/06	09/27/06
60191	Hamilton Beach/Proctor-Silex, Inc. (Comp)	Southern Pines, NC	10/03/06	10/02/06
60192	Black and Decker (Comp)	Charlotte, NC	10/03/06	09/20/06
60193	Ilpea (State)	Ft. Smith, AR	10/03/06	09/29/06
60194	Innovex, Inc. (State)	Litchfield, MN	10/03/06	10/03/06
60195	Kidde Residential and Commercial (Comp)	Mebane, NC	10/03/06	10/01/06
60196	TRW Automotive (State)	Rushford, MN	10/03/06	10/03/06
60197	C and C Smith Lumber Co., Inc. (Comp)	Summerhill, PA	10/03/06	10/03/06
60198	Westark Diversified Enterprise (State)	Ft. Smith, AR	10/03/06	10/02/06
60199	Airtex Products (Wkrs)	Fairfield, IL	10/04/06	10/03/06
60200	Fiskars Brands, Inc. (Comp)	Spencer, WI	10/04/06	10/04/06
60201	Weyerhaeuser Raymond Lumber Mill (Union)	Raymond, WA	10/04/06	10/04/06
60202	Goodyear Tire and Rubber Co. (USWA)	St. Marys, OH	10/04/06	09/28/06
60203	Performance Fibers (Comp)	Scottsboro, AL	10/04/06	10/04/06
60204	FAG Bearings (Comp)	Joplin, MO	10/04/06	10/02/06
60205	General Motors Vehicle Manufacturing (Wkrs)	Oklahoma City, OK	10/05/06	09/27/06
60206	Kentucky Derby Hosiery Co., Inc. (Comp)	Mt. Airy, NC	10/05/06	10/02/06
60207	Lego Systems, Inc. (Comp)	Enfield, CT	10/05/06	10/04/06
60208	Bauhaus USA, Inc. (Wkrs)	Sherman, MS	10/05/06	10/04/06
60209	Cowan Plastic Products Corp. (State)	Providence, RI	10/05/06	10/04/06
60210	Gutmann Leather, LLC (Comp)	Chicago, IL	10/05/06	10/04/06
60211	American Dryer Corporation (Wkrs)	Fall River, MA	10/05/06	10/05/06
60212	Standex Electronics (Wkrs)	Douglas, AZ	10/05/06	10/04/06
60213	InkCycle (State)	Lenexa, KS	10/06/06	10/06/06
60214	Multy Industries USA, Inc. (Comp)	Atlanta, GA	10/06/06	10/05/06
60215	Gold Star Coatings (State)	West Branch, MI	10/06/06	10/06/06
60216	Component Concepts, Inc. (Wkrs)	Thomasville, NC	10/06/06	10/06/06
60217	Z-Star Industries, Inc. (Comp)	Watertown, NY	10/06/06	10/05/06
60218	Alcoa Global Fasteners, Inc. (Comp)	Stoughton, MA	10/06/06	09/25/06
60219	Marathon Electric (CWA)	Lima, OH	10/06/06	10/06/06
60220	Ferrero International S.A. (State)	Caguas, PR	10/06/06	10/02/06

[FR Doc. E6–18225 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,031]

Velcorex, Inc., A Division of Dollus Mieg Company; Orangeburg, SC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Velcorex, Inc., a division of Dollus Mieg Company, Orangeburg, South Carolina. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,031; Velcorex, Inc., A division of Dollus Mieg Company, Orangeburg, South Carolina, (October 18, 2006).

Signed at Washington, DC this 23rd day of October 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18219 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,623; TA–W–58,623CC; TA–W–58,623DD]

Westpoint Home, Inc., Formerly Westpoint Stevens, Inc. Corporate Office Including On-Site Leased Workers of Ambassador Personnel in the Corporate Office, Claims Department; West Point, Georgia; Including Employees of Westpoint Home, Inc., Formerly Westpoint Stevens, Inc., Corporate Office, West Point, Georgia Employees Working at the Following Locations: Cotton Department Valley, Alabama, Records Center West Point, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on February 21, 2006, applicable to workers of WestPoint Home, Inc., formerly WestPoint Stevens, Inc., Corporate Office West Point, Georgia. The notice was published in the **Federal Register** on March 22, 2006 (71 FR 14549).

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information shows that worker separations have occurred involving employees of the Corporate Office, West Point, Georgia of WestPoint Home, Inc., formerly WestPoint Stevens, Inc. located in the Cotton Department, Valley, Alabama and the Records Center, West Point, Georgia. The workers provided support services for the manufacture of comforters, sheets, pillowcases, towels and blankets produced by WestPoint Home, Inc., formerly WestPoint Stevens, Inc.

Information also shows that leased workers of Ambassador Personnel were employed on-site at the West Point, Georgia location of WestPoint Home, Inc., formerly WestPoint Stevens, Inc., Corporate Office, Claims Department.

In addition, in accordance with section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

The Department has determined in this case the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Based on these findings, the Department is amending this certification to include employees of the Corporate Office, West Point, Georgia facility WestPoint Home, Inc., formerly WestPoint Stevens, Inc. located at the Cotton Department, Valley, Alabama and the Records Center, West Point, Georgia.

The intent of the Department's certification is to include all workers of WestPoint Home, Inc., formerly WestPoint Stevens, Inc., Corporate Office, West Point, Georgia who were adversely affected by increased company and customer imports.

The amended notice applicable to TA–W–58,623 is hereby issued as follows:

''All workers of WestPoint Home, Inc., formerly WestPoint Stevens, Inc., Corporate Office, including on-site leased workers of Ambassador Personnel, who reported to the Corporate Office, Claims Department, West Point, Georgia (TA–W–58,623), including employees reporting to this office but working at the Cotton Department, Valley, Alabama (TA–W–58,623CC) and the Records Center, West Point, Georgia (TA–W–58,623DD), who became totally or partially separated from employment on or after January 12, 2005, through February 21, 2008, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of October 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18216 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2006.

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 November 13, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of October 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 10/10/06 and 10/13/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60221	Whittier Wood Products (Comp)	Eugene, OR	10/10/06	10/06/06
60222	Textile, Inc. (Comp)	Ronda, NC	10/10/06	09/12/06
60223	Zippo Manufacturing Company (Comp)	Bradford, MA	10/10/06	10/09/06
60224	Misty Mountain Threadworks, Inc. (Comp)	Banner Elk, NC	10/10/06	09/28/06
60225	ITW Paslode (State)	Augusta, AR	10/10/06	10/09/06
60226	Washington Mutual LFC (Wkrs)	Bethel Park, PA	10/10/06	10/10/06
60227	Amcor Pet Packaging (Wkrs)	Erie, PA	10/10/06	10/09/06
60228	Eudyna Devices USA, Inc. (State)	San Jose, CA	10/10/06	10/10/06
60229	City Machine Tool and Die Co., Inc. (Comp)	Muncie, IN	10/10/06	10/10/06
60230	Creative Engineered Polymer Products, LLC (Union)	Crestline, OH	10/11/06	10/10/06
60231	Molly West Hand Bound Books (Wkrs)	Emeryville, CA	10/11/06	10/10/06
60232	Sildler, Inc. (COMP)	LaOtto, IN	10/11/06	09/26/06
60233	Cencorp, LLC (Comp)	Longmont, CO	10/12/06	10/11/06
60234	Maytag Searcy Laundry Products (Comp)	Searcy, AR	10/12/06	10/11/06
60235	Agmapore (State)	Tolleson, AZ	10/12/06	09/13/06
60236	Tracewell Electronics (Union)	Cuba, NY	10/12/06	10/06/06
60237	Woodsmiths Company (The) (State)	Lenoir, NC	10/12/06	10/04/06
60238	Ossure—Generation II (State)	Bothell, WA	10/12/06	10/10/06
60239	Fischbein-Inglett and Company (State)	Augusta, GA	10/12/06	10/11/06
60240	Georgia Pacific Corporation (Union)	Camas, WA	10/12/06	10/10/06
60241	Ingenix (Wkrs)	Louisville, KY	10/12/06	10/12/06
60242	Thornton Fashion Designs, Inc. (Wkrs)	San Francisco, CA	10/13/06	10/01/06
60243	Oakwood Metal Fabricating (Comp)	Taylor, MI	10/13/06	10/12/06
60244	Mosey Manufacturing Co., Inc. (Comp)	Richmond, IN	10/13/06	10/12/06

[FR Doc. E6–18221 Filed 10–30–06; 8:45 am]

BILLING CODE 4510–30–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–17]

Notice of the November 8, 2006 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Wednesday, November 8, 2006.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Suzi M. Morris via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to consider the selection of countries that will be eligible for FY 2007 Millennium Challenge Account (''MCA'') assistance under Section 607 of the Millennium Challenge Act of 2003 (the ''Act''), codified at 22 U.S.C. 7706, or Threshold Program assistance under section 616 of the Act; discuss progress on proposed Compacts with certain MCA-eligible countries; discuss MCC's proposed policy on suspension and termination of assistance and eligibility; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: October 27, 2006.

William Geoff Anderson, Jr.,

Vice President and General Counsel (Acting), Millennium Challenge Corporation.

[FR Doc. 06–9014 Filed 10–27–06; 3:38 pm]

BILLING CODE 9210–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–00017]

Notice of License Termination and Release of the Dow Chemical Company (TDCC) Site in Bay City, MI for Unrestricted Use

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of license termination and site release for unrestricted use.

FOR FURTHER INFORMATION CONTACT: David W. Nelson, Materials Decommissioning Section, Division of Waste Management and Environmental Protection, NRC, Washington, DC, 20555; telephone: (301) 415–6626; fax: (301) 415–5397; or e-mail at: *dwn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR part 20 subpart E, the U.S. Nuclear Regulatory Commission (NRC) is providing notice that it has terminated license STB–527 for the Dow Chemical Company (TDCC) (Licensee), and has released its Bay City, Michigan site for unrestricted use. The Licensee's requests for an amendment to

authorize decommissioning of its Bay City, Michigan site was previously noticed in the **Federal Register** on July 19, 1996, and July 10, 1997.

In letters dated July 21, 1997, April 13, 2005 and October 6, 2005, TDCC provided final radiological status surveys to demonstrate that the site met the license termination criteria in 10 CFR part 20 subpart E. NRC staff conducted numerous inspections and confirmatory surveys including the collection of samples and independent measurements of on-site soils and building surfaces.

The NRC staff evaluated TDCC's requests and reviewed the results of the final radiological surveys. Based on those reviews, the staff determined that the site met the unrestricted release criteria in 10 CFR part 20 subpart E. The staff prepared a Safety Evaluation Report (SER) (ADAMS ML062500107) to support its termination of TDCC's Bay City license.

II. Further Information

In accordance with 10 CFR part 2.790 of the NRC's ''Rules of Practice,'' details with respect to this action, including the SER, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the termination letter with enclosed SER, titled ''Release of the Dow Chemical Company. Bay City, Michigan, and Termination of License (License No. STB–527)'' is ML062500107. If you do not have access to ADAMS or if there are problems in accessing a document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

This document may also be viewed electronically on the public computers located at the NRC's PDR, O–1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at NRC, Rockville, MD, this day of October 24th, 2006.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E6–18243 Filed 10–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Power Company LLC ; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company LLC (the licensee) to withdraw its September 15, 2005, application for proposed amendment to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 for Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County.

The proposed amendment would have revised the Technical Specifications (TSs) to relocate the pressure temperature limit curves of TS 3.4.3 to the Selected Licensee Commitments Manual and TS Section 5.6.9 to reflect the requirements of Generic Letter 96–09 for this relocation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 21, 2005 (70 FR 55425). However, by letter dated September 26, 2006, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 15, 2005, and the licensee's letter dated September 26, 2006, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of October, 2006.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–18241 Filed 10–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Meetings; Sunshine Act

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of October 30, November 6, 13, 20, 27, December 4, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 30, 2006

There are no meetings scheduled for the Week of October 30, 2006.

Week of November 6, 2006—Tentative

Wednesday, November 8, 2006

9:30 a.m.

Briefing on Digital Instrumentation and Control (Public Meeting). (Contact: Paul Rebstock, 301–415–3295.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, November 9, 2006

9:30 a.m.

Briefing on Draft Final Rule—Part 52 (Early Site permits/Standard Design Certification/Combined Licenses) (Public Meeting). (Contact: Dave Matthews, 301–415–1199.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 13, 2006—Tentative

There are no meetings scheduled for the Week of November 13, 2006.

Week of November 20, 2006—Tentative

There are no meetings scheduled for the Week of November 20, 2006.

Week of November 27, 2006—Tentative

There are no meetings scheduled for the Week of November 27, 2006.

Week of December 4, 2006—Tentative

Thursday, December 7, 2006

9:30 a.m.

Discussion of Security Issues (Closed—Ex. 2 & 3).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determination on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 26, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–8997 Filed 10–27–06; 11:01 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Import Statistics Relating to Competitive Need Limitations; 2006 Annual GSP Review; Petitions Requesting CNL Waivers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the availability of eight-month 2006 import statistics relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP) program. The eight-month 2006 import statistics identify those articles for which the 2006 trade levels may exceed statutory CNLs. The interim trade data is available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html.*

As previously announced in the **Federal Register** (71 FR 37129 (June 29, 2006)), the deadline for submission of product petitions to waive the CNLs for individual beneficiary developing countries with respect to GSP-eligible articles is 5 p.m., November 17, 2006. Petitions must conform to the requirements as set forth in the June 29, 2006 **Federal Register** notice. Public comments regarding possible *de minimis* waivers and possible GSP redesignations will be requested in a subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act sets out the two competitive need limitations (CNLs). When the President determines that a BDC exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($125 million for 2006), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent CNL''), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year.

Under section 503(c)(2)(F) of the 1974 Act, the President may also waive the 50 percent CNL with respect to an eligible article imported from a BDC if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year ($18 million for 2006). Further, under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may redesignate such an article for duty free treatment if imports in the most recently completed year did not exceed the CNLs. Comments on *de minimis* waivers and redesignations will be requested after publication of a separate **Federal Register** notice.

Section 505 of the 1974 Act states that duty-free treatment provided under the GSP shall not remain in effect after December 31, 2006. If the program expires without reauthorization on that date, the 2006 Annual GSP review will be conducted according to a schedule to be issued in the **Federal Register**, if and when the program is reauthorized.

II. Implementation of Competitive Need Limitations

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2007, unless previously granted a waiver by the President. CNL exclusions will be based on full 2006 calendar year import statistics.

III. Interim 2006 Import Statistics

In order to provide advance notice of articles that may exceed the CNLs for 2006, ''Interim 2006 Import Statistics Relating to Competitive Need Limitations'' that cover the first eight months of 2006 can be viewed at: *http://www.ustr.gov/Trade_Development/Preference_Program/GSP/Section_Index.html.* If unable to access these statistics, contact the GSP Subcommittee of the Trade Policy Staff Committee, which will make alternate arrangements to provide the lists. Full calendar-year 2006 data for individual tariff subheadings will be available in February 2007 on the Web site of the U.S. International Trade Commission at *http://dataweb.usitc.gov/.*

The Interim 2006 Statistics are organized to show, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC of origin, the value of imports of the article for the first eight months of 2006, and the percentage of total imports of that article from all countries. The list includes the GSP-eligible articles from BDCs that have already exceeded the CNLs by their import levels amounting to more than $125 million, or by an amount greater than 50% of the total value of U.S. imports of that product in 2006. The list also includes GSP-eligible articles that, based upon interim eight-month 2006 data, exceed $95 million dollars, or an amount greater than 42 percent of the

total value of U.S. imports of that product. The ''D'' flag next to articles on the list indicates articles that, based on eight-month 2006 trade data, may be eligible for a *de minimis* waiver because the total value of imports of that article from all countries is below $12 million.

The list published on the USTR Web site is provided for informational purposes only. The list is computer-generated and based on interim 2006 data, and may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the list, all determinations and decisions regarding the CNLs of the GSP program will depend on full calendar year 2006 import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2006 import data with regard to the possible application of GSP CNLs. Please see the notice announcing the 2006 GSP Review which was published in the **Federal Register** on June 29, 2006 for further details on submitting a petition for a CNL waiver.

Marideth J. Sandler,

Executive Director for the GSP Program, Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. E6–18304 Filed 10–30–06; 8:45 am]

BILLING CODE 3190–W7–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27523; 812–13056]

Tactical Allocation Services, LLC, *et al.;* Notice of Application

October 24, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of Application: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts (''UITs'') both within and outside the same group of investment companies.

Applicants: Agile Funds, Inc. (the ''Company''), with respect to its portfolio series (each a ''Fund'' and collectively the ''Funds''), and Tactical Allocation Services, LLC (the ''Adviser'').

Filing Dates: The application was filed on December 18, 2003 and amended on October 20, 2006.

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. November 17, 2006, 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, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090; Applicants, Tactical Allocation Services, LLC, and Agile Funds, Inc., 4909 Pearl East Circle, Suite 300, Boulder, Colorado 80301–6101.

FOR FURTHER INFORMATION CONTACT: Nadya Roytblat, Assistant Director, 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 for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Company is a Maryland corporation and an open-end management investment company registered under the Act. One Fund of the Company is the Agile Multi-Strategy Fund (the ''Multi-Strategy Fund''). The Adviser, a Colorado limited liability company, serves as investment adviser to the Multi-Strategy Fund and is registered under the Investment Advisers Act of 1940.

2. Applicants request relief to permit: (1) One or more Funds (including the Multi-Strategy Fund, ''Funds of Funds'') to acquire shares of: (a) Registered open-end management investment companies or UITs that are not part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (''Other Group Funds'') [1] and the Other Group Funds to sell such shares to the Fund of Funds; and (2) the Fund of Funds to acquire shares of certain Funds that are in the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (the ''Same Group Funds'') (together with the Other Group Funds, the ''Underlying Funds'') and the Same Group Funds to sell such shares to the Fund of Funds. Applicants also apply for an order pursuant to section 6(c) and section 17(b) of the Act exempting Applicants from section 17(a) of the Act to the extent necessary to permit purchases and redemptions by a Fund of Funds of shares of the Underlying Funds and to permit the Underlying Funds to sell or redeem their shares in transactions with the Fund of Funds.[2] Applicants state that the requested relief will enable investors to achieve a diversified investment in a range of Underlying Funds through a single investment in a Fund of Funds.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling shares of the investment company to any other investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or

[1] The Other Group Funds may include UITs (''Other Group Trusts'') and open-end management investment companies (''Other Group Management Companies'') that have recieved exemptive relief to sell their shares on a national securities exchange at negotiated prices (''EFTs''). Shares of an ETF also may be purchased from the EFT in large aggregations by delivering a basket of specified securities to the ETF, and large aggregations of shares may be redeemed from an ETF in exchange for a basket of specified securities (''In-kind EFT Purchases and Redemptions'').

[2] All existing investment companies that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the order.

transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of Underlying Funds and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell shares of the Underlying Funds to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over an Other Group Fund. To limit the control that a Fund of Funds may have over an Other Group Fund, applicants propose a condition prohibiting: (a) The Adviser and any person controlling, controlled by or under common control with the Adviser, and any investment company or any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the ''Adviser Group''), and (b) any investment adviser to a Fund of Funds that meets the definition of section 2(a)(20)(B) of the Act (''Sub-adviser''), any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the ''Subadviser Group'') from controlling an Other Group Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose conditions to preclude a Fund of Funds and its affiliated entities from taking advantage of an Other Group Fund. Under condition 2, no Fund of Funds or its Adviser, Sub-Adviser, promoter, principal underwriter or any person controlling, controlled by or under common control with any of these entities (each, a ''Fund of Funds Affiliate''), will cause any existing or potential investment by the Fund of Funds in shares of an Other Group Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Other Group Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an ''Other Group Fund Affiliate''). Condition 5 precludes a Fund of Funds and any Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Other Group Management Company or sponsor to an Other Group Underlying Trust) from causing an Other Group Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Adviser, Sub-Adviser, or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Other Group Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. As an additional assurance that an Other Group Management Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in an Other Group Management Company in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and the Other Group Management Company execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement). Applicants note that an Other Group Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.[3]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, before approving any investment advisory contract under section 15 of the Act, the board of directors or trustees (''Board'') of each Fund of Funds, including a majority of the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Directors''), will find that the investment advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except as may be permitted by a Commission order allowing an Underlying Fund to purchase shares of an affiliated investment company for short-term cash management purposes or rule 12d–1 under the Act. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the proposed Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds. Each Fund of Funds also will comply with the disclosure requirements adopted in Investment Company Act Release No. 27399 (June 20, 2006).

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling,

[3] An Other Group Fund, including an EFT, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

controlled by, or under common control with the other person.

2. Applicants state that since the Funds of Funds and the Same Group Funds may be advised by the Adviser or share common officers or directors, they might be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[4]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of 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 policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of the Underlying Fund.[5] Applicants state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The members of the Adviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Other Group Fund, the Adviser Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Other Group Fund, it will vote its shares of the Other Group Fund in the same proportion as the vote of all other holders of the Other Group Fund's shares. This condition does not apply to the Subadviser Group with respect to an Other Group Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Other Group Management Company) or as the sponsor (in the case of an Other Group Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Other Group Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Other Group Fund or an Other Group Fund Affiliate.

3. The Board of a Fund of Funds, including a majority of the Disinterested Directors, will adopt procedures reasonably designed to assure that the Adviser and any Subadviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Other Group Fund or an Other Group Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Other Group Management Company exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Other Group Management Company, including a majority of the Disinterested Directors, will determine that any consideration paid by the Other Group Management Company to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Other Group Management Company; (b) is within the range of consideration that the Other Group Management Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Other Group Management Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Other Group Management Company or sponsor to an Other Group Trust) will cause an Other Group Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Other Group Management Company, including a majority of the Disinterested Directors, will adopt procedures reasonably designed to monitor any purchases of securities by the Other Group Management Company in Affiliated Underwritings, once an investment by a Fund of Funds in the securities of the Other Group Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Other Group Management Company. The Board will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Other Group Management Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities

[4] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

[5] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent a Fund of Funds engages in In-kind ETF Purchases and Redemptions, Applicants request relief from section 17(a) for these transactions.

purchased by the Other Group Management Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. The Other Group Management Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of an Other Group Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Other Group Management Company were made.

8. Before investing in an Other Group Management Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Other Group Management Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Other Group Management Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Other Group Management Company of the investment. At such time, the Fund of Funds will also transmit to the Other Group Management Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Other Group Management Company of any changes to the list as soon as reasonably practicable after a change occurs. The Other Group Management Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Directors, will find that the advisory fees charged under such advisory contract are based on services provided that are in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Other Group Management Company under rule 12b–1 under the Act) received from an Other Group Management Company by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Other Group Management Company, in connection with the investment by the Fund of Funds in the Other Group Management Company. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Other Group Management Company, in connection with the investment by the Fund of Funds in the Other Group Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except as may be permitted by a Commission order allowing an Underlying Fund to purchase shares of an affiliated investment company for short-term cash management purposes or rule 12d–1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18256 Filed 10–30–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–37; File No. S7–17–06]

Privacy Act of 1974: Establishment of a New System of Records: Photographic Files (SEC–54)

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the establishment of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission gives notice of a proposed Privacy Act system of records: ''Photographic Files (SEC–54).'' This system of records will contain a collection of photographic materials, in print and electronic format, related to Commission staff and events.

DATES: The new system will become effective December 11, 2006 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before November 30, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–17–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–17–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site

(*http://www.sec.gov/rules/other.shtml*) Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413, (202) 551–7209.

SUPPLEMENTARY INFORMATION: The Commission gives notice of the proposed establishment of a new system of records entitled ''Photographic Files (SEC–54).'' The new system of records will contain photographic materials, in print and electronic format, related to Commission staff and events. Many of the physical photographic materials are old and fragile. Repeated handling of these materials causes additional damage. Digitizing this collection will serve to preserve the materials and make them accessible. The records may also be indexed and therefore retrievable by such data elements as date, event, and personal name.

The Commission has submitted a report of the new system of records to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' as amended on February 20, 1996 (61 FR 6435).

Accordingly, the Commission is adding a new system of records to read as follows:

SEC–54

SYSTEM NAME

Photographic Files.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission staff, visitors from other Federal agencies and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system include photographic prints, negatives, and slides. Records may also include digital photographs, as well as digitized images of photographic prints, negatives, and slides. Indexing data, including such data elements as date, event, and personal name, will be created for these materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

Photographic files are provided to the Securities and Exchange Commission library (''Library'') on an ongoing basis for inclusion in the Library's collection. Many of the photographic materials in the collection are old and fragile. Repeated handling of these materials causes further damage. Digitizing this collection will support the preservation of these materials, and indexing the collection by such information as date, event, and personal name, will make these materials accessible to Commission staff and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be disclosed to the public as follows:

(1) For reproduction by Commission staff organizing such events as awards ceremonies, farewell ceremonies and receptions, Commission anniversary ceremonies and receptions, and Commission training and educational programs;

(2) For distribution and presentation for news, public relations and community affairs purposes; and

(3) In support of research activities conducted by staff of the Commission and other Federal agencies, as well as members of the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The photographic prints, negatives, and slides are stored in the Commission's Library in a locked file room. These photographic materials will be transferred to the Office of Filings and Information Services after they have been digitized. Digital images, along with indexing data, will be stored on secure Commission servers and made available on the Commission's intranets and public Web site, as appropriate.

RETRIEVABILITY:

Records may be retrieved by such information as date of event, name of event, and/or name(s) of individual(s), where such information is available.

SAFEGUARDS:

Physical photographic materials are stored in a locked file room in the Commission's Library. The Library is in a secured area. Digital records and indexing data are stored on secure servers. Server access is limited to authorized personnel whose duties require such access.

RETENTION AND DISPOSAL:

Physical and electronic photographic file records are permanent. Records will be retired to Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Cynthia Plisch, Assistant Director, Reference and Information Services, Securities and Exchange Commission, Library, 100 F Street, NE., Room 1550, Washington, DC 20549–1550, 202–551–5450.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to: Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0–7, Alexandria, VA 22312–2413.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to, or contesting the contents of, this record may contact: Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0–7, Alexandria, VA 22312–2413.

CONTESTING RECORDS PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

Photographic files are provided to the Library for inclusion in the Library's collection on an ongoing basis. Donors include Commission employees who have photographed an event or individuals donating their photographic collections to the Library for the purposes of preservation and access. Indexing information is derived from information recorded on photographs, or from Commission staff or other individuals who have knowledge of the event and individuals photographed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 24, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18234 Filed 10–30–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54650; File No. SR–NASD–2004–130]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Amendments to Rule 2320(g) (Three Quote Rule) and Corresponding Recordkeeping Requirements Under Rule 3110(b)

October 25, 2006.

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 August 27, 2004, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. On May 8, 2006, NASD filed Amendment No. 1 to the proposed rule change.[3] On October 19, 2006, NASD filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 2320(g) (''Three Quote Rule'') and the corresponding recordkeeping requirements under Rule 3110(b) to exclude from the Three Quote Rule's coverage transactions in foreign securities of a foreign issuer that are part of the FTSE All-World Index.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g) (1) *Except as provided in subparagraph (3) below,* [Unless two or more priced quotations for a non-exchange-listed security (as defined in the Rule 6600 Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis,] in any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security *(as defined in the Rule 6600 Series)*, a member or person associated with a member shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) No Change.

(3) *The requirements described in subparagraph (1) above shall not apply:*

(A) when two or more priced quotations for a non-exchange-listed security are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis; or

(B) to any transaction pertaining to the execution of an order in a non-exchange-listed security of a foreign issuer that is part of the FTSE All-World Index if such transaction is executed during the regular business hours of the foreign market for the foreign security and no trading halt or other similar trading or quoting restriction is in effect in any foreign market on which such foreign security is listed.

(4) Definitions.

For purposes of this paragraph *(g):* [,]

(A) T[t]he term ''inter-dealer quotation system'' means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(B) [(4) For purposes of this paragraph,] *T*[t]he term ''quotation medium'' means any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(5) No Change.

* * * * *

3110. Books and Records

(a) No Change.

(b) Marking of Customer Order Tickets

A person associated with a member shall indicate on the memorandum for each transaction in a non-exchange-listed security, as that term is defined in the Rule 6600 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if *the member can establish and has documented that:*

(1) two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD [Regulation] has access to historical quotation information*; or*

(2) the transaction is effected in compliance with Rule 2320(g)(3)(B).

(c) through (j) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Rule Filing History

On August 27, 2004, NASD filed with the Commission proposed rule change SR–NASD–2004–130, proposing amendments to Rule 2320(g) and Rule 3110(b) to exclude from the Three Quote Rule's coverage transactions in foreign securities of a foreign issuer that are part of the FTSE World Index. On May 8, 2006, NASD filed Amendment No. 1 to change the proposed exclusion from the Three Quote Rule's coverage transactions in foreign securities of a foreign issuer that are part of the FTSE All-World Index, rather than the FTSE World Index.[5]

On June 30, 2006, the Commission approved SR–NASD–2005–087, which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superceded in its entirety the text of the original filing.

[4] Amendment No. 2 replaced and superceded in its entirety the text of the original filing, as amended.

[5] The FTSE World Index is a sub-set of the FTSE All-World Index. The list of securities that comprise the FTSE All-World Index are substantially similar to the list of securities that comprise the FTSE World Index. The key difference is that the FTSE All-World Index is comprised of securities from Developed, Advanced Emerging and Secondary Emerging markets, whereas the FTSE World Index is comprised of securities from Developed and Advanced Emerging market segments only. The FTSE World Index, however, is no longer offered other than to existing FTSE subscribers. Given that the FTSE World Index would not be widely accessible, NASD amended its filing accordingly. *See* Exhibit 2 to Amendment No. 2 for additional details, available on the NASD's Web site at *www.nasd.com.*

The information in this proposed rule change, as amended, and in Exhibit 2 thereto relating to the FTSE All-World Index is based on information published on FTSE's Web site at *www.ftse.com,* as well as from conversations between NASD staff and FTSE staff.

amended certain NASD rules to reflect the separation of Nasdaq from NASD upon the operation of the Nasdaq Exchange as a national securities exchange.[6] Among other amendments, SR–NASD–2005–087 amended Rules 2320(g) and 3110(b) to replace the term ''non-Nasdaq securities'' with ''non-exchange-listed securities.'' SR–NASD–2005–087 became effective on August 1, 2006, the date upon which Nasdaq began operation as an exchange for Nasdaq-listed securities.

Given the Commission's approval of SR–NASD–2005–087, NASD filed Amendment No. 2. Amendment No. 2, which replaces and supersedes the prior filings in their entirety, amends the proposed rule text and description to reflect Nasdaq's operation as an exchange, among other clarifying changes.

Proposal

The Three Quote Rule originally was adopted on May 2, 1988,[7] as an amendment to NASD's best execution interpretation and generally requires that members that execute transactions in non-exchange-listed securities[8] on behalf of customers contact a minimum of three dealers (or all dealers if three or less) and obtain quotations, if there are fewer than two quotations displayed on an inter-dealer quotation system that permits quotation updates on a real-time basis. The Three Quote Rule further defined a member's best execution obligation to customers by setting forth additional requirements for transactions in non-exchange-listed securities, particularly transactions involving relatively illiquid securities with non-transparent prices. The Three Quote Rule is a minimum standard, and compliance with the rule, in and of itself, does not mean a member has met its best execution obligations.

Since the adoption of the Three Quote Rule, the market for non-exchange-listed securities has changed significantly. NASD has found that under certain circumstances, the Three Quote Rule often can hinder, rather than further, best execution by causing significant delays in obtaining executions of customer orders. For example, in 2000, NASD amended the Three Quote Rule to eliminate the requirement to contact three market makers when there are at least two priced quotations displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis.[9] NASD concluded that, where there were two transparent, firm quotes, the costs associated with delayed executions resulting from compliance with the Three Quote Rule were not outweighed by the benefits of obtaining three telephone quotes.

Similar concerns have been raised with respect to the Three Quote Rule's application in the area of orders in foreign securities of foreign issuers. Certain members and other interested parties had raised concerns that the Three Quote Rule was unnecessary and potentially harmful to the customer's best interests when a member, using reasonable diligence, has determined that the best market for a foreign security is a foreign market where the securities trade with sufficient liquidity and transparency.

NASD staff agreed that the protections of the Three Quote Rule may not be necessary with respect to all orders in foreign securities. In fact, according to the NASD, the Commission, in its approval order granting NASD exemptive authority with respect to the Three Quote Rule, specifically indicated that exemptive relief may be appropriate for transactions executed on a foreign exchange.[10] The NASD noted that the Commission stated that exemptive relief may be appropriate in such circumstances because the foreign exchange may constitute the best market for securities that are listed on that market and the time delay involved in contacting three dealers may, therefore, hinder a member from obtaining best execution for the customers.[11]

Accordingly, NASD is proposing amendments that would exclude from the Three Quote Rule's coverage transactions effected in foreign securities of foreign issuers that are part of the FTSE All-World Index.[12] Therefore, under the proposed rule change, a member would not be required to obtain three quotes in connection with transactions in foreign securities that are part of the FTSE All-World Index. The proposed rule change would not require that the transaction be executed on a foreign market so as not to limit the member's ability to determine, in fulfilling its best execution obligations, that a better execution would be obtained off the foreign market. However, to qualify for the exemption, the transaction must be executed during regular business hours of the foreign market for the security and no trading halt or other similar trading or quotation restriction may be in effect in any foreign market on which for such foreign security is listed.[13]

NASD has selected the FTSE All-World Index in part because, according to the NASD, Commission staff has deemed the foreign securities that are listed on the FTSE World Index, a subset of the FTSE All-World Index, as having a ''ready market'' and therefore eligible to receive comparable favorable treatment to U.S. equity securities under the securities haircut[14] provisions of the SEC's net capital rule.[15] In addition, the Federal Reserve Board recognizes the FTSE World Index for determining whether stocks are eligible for margin treatment. NASD believes that the criteria used in determining the composition of the FTSE World Index, which are substantially the same for the FTSE All-World Index, helps to ensure that the securities trade with a high

[6] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

[7] *See* Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

[8] The Three Quote Rule applies to transactions in all non-exchange-listed securities. A non-exchange-listed security is defined in NASD Rule 6610 as ''any equity security that is not traded on any national securities exchange * * *.'' Therefore, the rule by its terms applies to transactions effected on any foreign exchange. The term ''national securities exchange'' is not defined in NASD rules, but the requirements to qualify are set forth in Sections 6(a) and 19(a) of the Act. *See* 15 U.S.C. 78f(a) and 78s(a). *See also* Securities Exchange Act Release No. 39266 (October 22, 1997), 62 FR 56217 (October 29, 1997).

[9] *See* Securities Exchange Act Release No. 43319 (September 21, 2000), 65 FR 58589 (September 29, 2000). This rule change also alleviated the corresponding recordkeeping requirements under Rule 3110(b) where NASD could validate and confirm compliance with applicable requirements directly through its internal historical data.

[10] *See* Securities Exchange Act Release No. 39266 (October 22, 1997), 62 FR 5617 (October 29, 1997).

[11] *Id.*

[12] NASD states that the Financial Times and the London Stock Exchange operate the FTSE All-World Index. The FTSE All-World Index includes 48 different countries and approximately 3,000 stocks. *See* Exhibit 2 to Amendment No. 2 for a detailed description of the criteria used to determine the FTSE All-World Index.

[13] Contingent upon approval of the proposed rule change, NASD staff plans to withdraw all existing exemptions it has granted to the Three Quote Rule that relate to foreign securities. NASD staff has granted seven exemptions for customer transactions in Canadian securities executed on a Canadian exchange on an agency or riskless principal basis. *See, e.g.*, Letter to Mr. Kenneth W. Perlman, General Counsel, Mayer & Schweitzer, Inc., from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, Inc., on May 29, 1998.

[14] NASD notes that the Commission's net capital rule requires broker-dealers, when computing net capital, to deduct from their net worth certain percentages of the market value of their proprietary securities positions, commonly referred to as ''haircuts.'' Haircuts are calculated under paragraphs (c)(2)(vi), (c)(2)(vii), and applicable appendices of the standard net capital rule, SEC Rule 15c3–1. 17 CFR 240.15c3–1.

[15] *See* 1993 SEC No-Act LEXIS 967 (August 13, 1993) (regarding foreign equity issues listed on the FT-Actuaries World Index as having a ready market with respect to the ready market and haircut provisions of the SEC's net capital rule). NASD states that the calculation of the FT/S&P Actuaries World Index was taken over by FTSE in November 1999 and renamed the FTSE World Index, which is a subset of the FTSE All-World Index.

degree of liquidity, consistency, and price transparency.[16]

Importantly, while the proposed rule change would not require a member to obtain three quotes in connection with transactions in foreign securities that are part of the FTSE All-World Index, members would continue to be required to comply with their best execution obligations under Rule 2320, and to the extent applicable, their suitability obligations under Rule 2310.

The proposed rule change also would provide a corresponding exclusion to the recordkeeping requirements set forth in Rule 3110(b) relating to the Three Quote Rule if the member can establish and document its reliance on this exclusion. Rule 3110(b) requires that members indicate on the order ticket for each transaction in a non-exchange-listed security the name of each dealer contacted and the quotations received to determine the best inter-dealer market as required by the Three Quote Rule.

In addition, NASD no longer refers to its subsidiary, NASD Regulation, Inc., using its full corporate name, ''NASD Regulation'' or ''NASD Regulation, Inc.'' Instead, NASD uses ''NASD'' unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces one reference to ''NASD Regulation'' in the text of the proposed rule change with ''NASD.''

Finally, NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act[17] in general, and with Section 15A(b)(6) of the Act[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will reduce the time and effort necessary in contacting three dealers in orders for foreign securities of certain foreign issuers where it has been demonstrated that such securities are trading with sufficient liquidity and price transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–NASD–2004–130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2004–130. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2004–130 and should be submitted on or before November 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18250 Filed 10–30–06; 8:45 am]

BILLING CODE 8011–01–P

[16] The FTSE All-World Index is based on a set of rules that govern the construction and maintenance of the index. Stocks comprising the FTSE All-World Index are screened to, among other things, ensure there is sufficient liquidity and the availability of accurate and timely data. Factors in determining liquidity include the level of trading volume relative to shares outstanding. *See* Exhibit 2 to Amendment No. 2 for further information.

[17] 15 U.S.C. 78o–3.

[18] 15 U.S.C. 78o–3(b)(6).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54651; File No. SR–NASD–2006–119]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the Flexibility of Nasdaq's INET Facility Order Routing Process for Reactive Only DOT Orders That Currently Are Ultimately Directed to the New York Stock Exchange or the American Stock Exchange

October 25, 2006.

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 October 18, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon filing with the Commission.[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

Nasdaq proposes to enhance the flexibility of Nasdaq's INET Facility (''INET'') order routing process for reactive only DOT orders (''Reacting Only Dot Orders'') that currently are ultimately directed to the New York Stock Exchange (''NYSE'') or the American Stock Exchange, as appropriate.

The text of the proposed rule change is available at the Commission's Public Reference Room, at NASD, and at *www.nasdaq.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to increase the flexibility of the INET order routing process for orders that currently are ultimately directed to other market centers. Currently, parties entering a marketable INET Reactive Only Dot Order are first directed to have those orders processed in the INET System and, after exhausting available liquidity in the INET System, thereafter automatically routed to other market centers. If the INET Reactive Only Dot Order is not marketable, it is added to the INET book. Nasdaq is proposing to modify the behavior of the INET order routing process for Reactive Only DOT Orders so that orders or residual orders can be sent to other market centers for potential execution whereby unexecuted shares will be returned to the INET System rather than the current practice of the unfilled orders remaining on the books of the other market centers until executed or cancelled.

Nasdaq believes that the proposed rule change will enhance the ability of market participants to take advantage of beneficial liquidity residing across all market centers as other market centers become more automated. Customers use the ''Reactive Only DOT'' order type when they want their order to be posted on the INET book for potential execution, but do not want to miss potential executions at other market centers, including the NYSE. Before the introduction of the NYSE Hybrid system, there was no way to receive an automatic execution in response to an Immediate or Cancel (''IOC'') order sent to the NYSE. As such, the order type as it works today will post the order on INET and ''react'' to quotes at other market centers. The system will send an IOC order to electronic market centers if they have a locking (marketable) quote. If the locking quote is at the NYSE, today Nasdaq will send the order to the NYSE and it will reside there until executed or cancelled.

With the introduction of the NYSE Hybrid system comes a new feature that Nasdaq would like to utilize using this order type. The new feature is the ability to receive immediate automatic executions in response to IOC orders. Nasdaq would like to be able to use this routing strategy to better respond to the requests of customers (*i.e.*, post the order to INET unless marketable on another market center and send an IOC to the NYSE when the NYSE has a locking quote, the same as Nasdaq does for other market centers). As before, no INET System Reactive Only Dot Order will execute in a Nasdaq-operated execution venue at an inferior price to one that is available at an accessible alternative venue.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(6) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[7]

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the intended benefits of the proposed modification to be made available as soon as practicable. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[8]

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

[3] 17 CFR 240.19b–4(f)(6).

[4] Nasdaq gave the Commission written notice of its intention to file the proposed rule change on October 6, 2006.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 17 CFR 240.19b–4(f)(6).

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–NASD–2006–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

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–NASD–2006–119 and should be submitted on or before November 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18252 Filed 10–30–06; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54649; File No. SR–NYSE–2006–88]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to NYSE Listed Company Manual Section 703.16 (Investment Company Units)

October 24, 2006.

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 October 20, 2006, the New York Stock Exchange LLC (''Exchange'' or ''NYSE'') 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 and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Section 703.16(B)(4)(a) of the NYSE Listed Company Manual (''Manual''). The text of the proposed rule change is available on NYSE's Web site at (*http://www.nyse.com*), at the principal office of NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to Investment Company Units (''ICUs'' or ''Investment Company Units'') that are consistent with the listing criteria currently used by other national securities exchanges and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[3] An ICU is defined in Section 703.16 of the Manual as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. A registered investment company is registered under the Investment Company Act of 1940.[4]

The ''generic'' listing criteria of Section 703.16 of the Manual permit listing of ICU's that satisfy such criteria in reliance upon Rule 19b–4(e) under the Act,[5] without a filing pursuant to Rule 19b–4 under the Act. Section 703.16(B)(4)(a) of the Manual requires, among other criteria that, if a series of ICUs is listed for trading on the Exchange in reliance upon Rule 19b–4(e) under the Act, the index underlying the series must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology.

According to the Exchange, the proposed rule change will specify one additional methodology. The Exchange proposes to amend Section 703.16(B)(4)(a) of the Manual to permit a series of ICUs to be listed under the generic listing standards pursuant to Rule 19b–4(e) under the Act,[6] if the underlying index for such series is weighted based on any, some or all of the following: Sales, cash flow, book

[3] In 1996, the Commission approved Section 703.16 of the Manual, which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR–NYSE–95–23). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR–NYSE–00–46).

[4] 15 U.S.C. 80a.

[5] 17 CFR 240.19b–4(e).

[6] *Id.*

value and dividends (''fundamentals weighted indexes'').[7]

''Sales'' refers to the total of reported operating revenues less various adjustments to gross sales, such as returns, discounts, allowances, excise taxes, insurance charges, sales taxes and value added taxes. In calculating the sales value, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

''Cash Flow'' refers to operating income plus depreciation. For example, a manufacturer typically reports its operating income as its net sales plus other operating income minus cost of goods sold and selling, general and administrative expenses. Depreciation expense for a manufacturer typically includes the depreciation that is directly related to or associated with tangible fixed assets and includes amortization of fixed assets that are part of plant, property and equipment such as leased assets, leasehold improvements and internal use software. For example, for a manufacturer, depreciation expense excludes amortization of intangible assets. For banks, financial companies and REITs, operating income refers to their total operating revenue minus total operating expenses. For REITs, depreciation expense includes depreciation relating to real estate property and includes corporate fixed asset depreciation if not separated from property depreciation. In calculating cash flow, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

''Book Value'' refers to a company's book value at the index review date. In accordance with accounting principles, book value generally means total common equity, which is derived from adding share capital and additional paid-in capital to retained earnings. In calculating book value, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

''Dividends'' refers to total dividend distributions, including both special and regular dividends paid in cash. Generally, the total dividend amount that is declared to all classes of common shareholders includes regular cash, as well as special cash dividends, and excludes returns of capital and in-specie dividends. In calculating dividends, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

The Exchange believes that the fundamentals weighting methodology is a transparent methodology that is appropriately included in the ICU generic listing criteria (which encompass exchange-traded funds) as an alternative to traditional weighting techniques. According to the Exchange, fundamental indexing provides an investor with additional choices in selecting exchange-traded funds whose underlying index emphasizes financial factors that the investor may believe are important. The NYSE notes that products based on indexes using this methodology are already subject to the other requirements of the generic listing standards pursuant to Rule 19b–4(e) under the Act.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes the proposed rule change should facilitate listing and trading of ICUs that rely on an index using a fundamentals weighting methodology and should thereby remove the burdens on issuers and other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–88 and should be submitted on or before November 21, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

[7] In each instance, the index methodology will set forth the means for calculating sales, cash flow, book value and dividends.

[8] 17 CFR 240.19b–4(e).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change amends the Exchange's existing generic listing standards pursuant to Rule 19b–4(e) under the Act [13] for ICUs to provide that an eligible index may be calculated following the ''fundamentals weighted'' or ''fundamental index'' methodology. This index calculation methodology weights components based on one or more of the following: sales, cash flow, book value, and dividends.[14]

Including this index calculation methodology in the Exchange's generic listing standards will provide investors with more investment choices by offering an alternative to the other index methodologies, such as capitalization-weighted indexes. The Commission notes that the indexes that would be based on the fundamentals weighting methodology will already be subject to the requirements of the generic listing standards pursuant to Rule 19b–4(e) under the Act,[15] including trading volume and liquidity requirements. In addition, by amending its generic listing standards pursuant to Rule 19b–4(e) under the Act,[16] the Exchange should reduce the time frame for listing or trading ICUs that rely on an index utilizing a fundamentals weighting methodology. The proposed rule change should therefore facilitate the listing or trading of such securities and thereby reduce the burdens on issuers and other market participants.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Commission believes the proposed rule change should provide investors with an alternative to the current index calculation methodologies. The proposed rule change is substantially identical to that approved for another exchange.[17] The Commission does not believe that the proposed rule change raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[18] to approve the proposed rule change on an accelerated basis.[19]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSE–2006–88) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18254 Filed 10–30–06; 8:45 am]

BILLING CODE 8011–01–P

[11] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.19b–4(e).

[14] According to the Exchange, in each instance, the index methodology will set forth the means of calculating sales, cash flow, book value, and dividends and thus will be transparent.

[15] 17 CFR 240.19b–4(e).

[16] *Id.*

[17] *See* Securities Exchange Act Release No. 54459 (September 15, 2006), 71 FR 55533 (September 22, 2006) (SR–NASDAQ–2006–035). *See also* Securities Exchange Act Release No. 54490 (September 22, 2006), 71 FR 58034 (October 2, 2006) (SR–NYSEArca–2006–61).

[18] 15 U.S.C. 78s(b)(2).

[19] The Commission's approval order is not retroactive in effect.

[20] *Id.*

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10676 and # 10677]

Florida Disaster # FL–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of FLORIDA dated 10/25/2006.

Incident: Flea Market Fire.

Incident Period: 09/25/2006.

Effective Date: 10/25/2006.

Physical Loan Application Deadline Date: 12/26/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 07/25/2007.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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

Duval.

Contiguous Counties

Florida: Baker, Clay, Nassau, and St. Johns.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10676–5 and for economic injury is 10677–0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Dated: October 25, 2006.

Steven C. Preston,

Administrator.

[FR Doc. E6–18299 Filed 10–30–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10678 and # 10679]

Hawaii Disaster # HI–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–1664–DR), dated 10/23/2006.

Incident: Kiholo Bay Earthquake.

Incident Period: 10/15/2006.

EFFECTIVE DATE: 10/23/2006.

Physical Loan Application Deadline Date: 12/22/2006.

Economic Injury (Eidl) Loan Application Deadline Date: 07/23/2007.

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 10/23/2006, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans): Hawaii.

The Interest Rates are:

For Physical Damage

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10678 2 and for economic injury is 10679 0.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. E6–18295 Filed 10–30–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10670 and #10671]

Kentucky Disaster #KY–00008

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Kentucky dated October 25, 2006.

Incident: Severe Storms and Flooding.

Incident Period: September 22, 2006 through September 29, 2006.

Effective Date: October 25, 2006.

Physical Loan Application Deadline Date: December 26, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: July 25, 2007.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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:

Fayette, Fulton, Hardin, and Woodford.

Contiguous Counties:

Kentucky: Anderson, Bourbon, Breckinridge, Bullitt, Clark, Franklin, Grayson, Hart, Hickman, Jefferson, Jessamine, Larue, Madison, Meade, Mercer, Nelson, and Scott.

Indiana: Harrison.

Missouri: Mississippi, and New Madrid.

Tennessee: Lake, and Obion.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250.
Homeowners Without Credit Available Elsewhere	3.125.
Businesses With Credit Available Elsewhere	7.934.
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000.
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000.
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000.

The number assigned to this disaster for physical damage is 10670 6 and for economic injury is 10671 0.

The States which received an EIDL Declaration # are Kentucky, Indiana, Missouri and Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 25, 2006.

Steven C. Preston,

Administrator.

[FR Doc. E6–18289 Filed 10–30–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10682 and # 10683]

New York Disaster # NY–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1665–DR), dated October 24, 2006..

Incident: Severe Storms and Flooding.

Incident Period: October 12, 2006 and continuing.

Effective Date: October 24, 2006.

Physical Loan Application Deadline Date: December 26, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: July 24, 2007.

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 October 24, 2006, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans):

Erie, Genesee, Niagara, Orleans.

Contiguous Counties (Economic Injury Loans Only):

New York: Cattaraugus, Chautauqua, Livingston, Monroe, Wyoming.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125

	Percent
Businesses With Credit Available Elsewhere	7.934
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10682 B and for economic injury is 10683 0.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–18296 Filed 10–30–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10674 and # 10675]

OHIO Disaster # OH–00008

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of OHIO dated 10/25/2006.

Incident: Severe Storms and Flooding.

Incident Period: 10/04/2006.

Effective Date: 10/25/2006.

Physical Loan Application Deadline Date: 12/26/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 07/25/2007.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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

Pike.

Contiguous Counties:

Ohio: Adams, Highland, Jackson Ross, and Scioto.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10674 6 and for economic injury is 10675 0.

The State which received an EIDL Declaration # is Ohio.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Steven C. Preston,

Administrator.

[FR Doc. E6–18300 Filed 10–30–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10672 and # 10673]

Virginia Disaster # VA–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Virginia dated 10/25/2006.

Incident: Severe Storms and Flooding.

Incident Period: 10/10/2006 through 10/13/2006.

EFFECTIVE DATE: 10/25/2006.

Physical Loan Application Deadline Date: 12/26/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 07/25/2007.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Franklin (City).

Contiguous Counties:

Virginia: Isle of Wight, Southampton.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10672 B and for economic injury is 10673 0.

The States which received an EIDL Declaration # are Virginia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Steven C. Preston,

Administrator.

[FR Doc. E6–18298 Filed 10–30–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5599]

Determination on U.S. Position on Proposed European Bank for Reconstruction and Development (EBRD) Regional Project To Include Serbia and Bosnia and Herzegovina

Pursuant to section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (FOAA), and Department of State Delegation of Authority Number 289, I hereby determine that the proposed regional project, an up to 105 euro investment in Europolis 3, a regional commercial real estate equity investment program that will invest up to 25% of its capital into Serbia, Bosnia and Herzegovina, Bulgaria, Macedonia, and Montenegro, will contribute to a stronger and more integrated economy in the Balkans and directly support implementation of the Dayton Accords. I therefore waive the application of Section 561 of the FOAA to the extent that provision would

otherwise prevent the U.S. Executive Directors of the EBRD from voting in favor of this project.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: September 15, 2006.

Daniel Fried,

Assistant Secretary of State for European and Eurasian Affairs, Department of State.

[FR Doc. E6–18303 Filed 10–30–06; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 5598]

Determination on U.S. Position on Proposed European Bank for Reconstruction and Development (EBRD) Project for Serbia

Pursuant to section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (FOAA), and Department of State Delegation of Authority Number 289, I hereby determine that the proposed project, a long-term 10 million euro EBRD loan to Štark, a.d., a leading Serbian confectionary company, to finance the company's modernization with the future goal of expanding its scope of operations in the region, will contribute to a stronger and more integrated economy in the Balkans and thus directly support implementation of the Dayton Accords. I therefore waive the application of Section 561 of the FOAA to the extent that provision would otherwise prevent the U.S. Executive Directors of the EBRD from voting in favor of this project.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: October 12, 2006.

Daniel Fried,

Assistant Secretary of State for European and Eurasian Affairs, Department of State.

[FR Doc. E6–18305 Filed 10–30–06; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 5597]

Intensive Summer Language Institutes

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E–07–01.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: January 5, 2007.

Executive Summary: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for projects to provide foreign language instruction overseas for American undergraduate and graduate students in the summer of 2007 in support of the National Security Language Initiative (NSLI). Public and private non-profit organizations, or consortia of such organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3), may submit proposals to implement six-to ten-week summer institutes overseas for a minimum total of 365 participants in countries where Arabic, Chinese, Korean, Russian and the Indic, Persian, and Turkic language families are widely spoken. These summer institutes should offer U.S. undergraduate and graduate students structured classroom instruction and less formal interactive learning opportunities through a comprehensive exchange experience that primarily emphasizes language learning. Proposals from applicant organizations should clearly indicate the building of new, additional institutional language-teaching capacity overseas for these summer institutes—this program is designed to develop additional language study opportunities for U.S. students.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Bureau of Educational and Cultural Affairs (ECA) is supporting the participation of American undergraduate and graduate students in intensive, substantive foreign language study to further strengthen national security and prosperity in the 21st century as part of the National Security Language Initiative (NSLI), launched by President Bush in January 2006.

Foreign language skills are essential to engaging foreign governments and peoples, especially in critical world regions, to promote understanding and convey respect for other cultures. These skills are essential to Americans who will support the nation's foreign affairs priorities, its economic competitiveness, and its educational institutions as they prepare future citizens for full engagement in the global environment. The broad NSLI initiative focuses resources on improving language learning for U.S. citizens across the educational spectrum and emphasizes the need to achieve mastery of critical languages; this activity focuses on the college and university section.

The goals of the Intensive Summer Language Institutes are:

- To develop a cadre of Americans with advanced linguistic skills and related cultural understanding who are able to advance international dialogue, promote the security of the United States, compete effectively in the global economy, and better serve the needs of students and academic institutions; and
- To improve the ability of Americans to engage with the people of other countries through the shared language of the partner country.

In order to achieve these goals, the Bureau supports programs for American undergraduate and graduate students to gain and improve language proficiency in Arabic, Chinese, Korean, Russian and the Indic, Persian, and Turkic language families. ECA plans to award a single grant for the recruitment and administration of all Intensive Summer Language Institutes in all world regions. Organizations with expertise in one or more of the indicated languages are encouraged to seek partners in the other languages to submit a single proposal. Consortia must designate a lead institution to receive the grant award. Applicant organizations may submit grant proposals requesting funds not exceeding $6,000,000 to implement these overseas language institutes between June and August 2007.

Through these institutes, undergraduate and graduate students from the United States will spend six to ten weeks on a program abroad in the summer of 2007. Since there is an emphasis on substantial progress in foreign language advancement, applicant organizations need to concentrate most efforts on language programs and explain clearly the utility and advantages of proposing programs closer to six weeks. The institutes will provide intensive language instruction in a classroom setting, and should also provide language-learning opportunities through immersion in the cultural,

social, and educational life of the partner country. The exchange program should enhance the participants' knowledge of the host country's history, culture, and political system as these support language learning. Language study must be the primary focus of the program.

Expected Program Results

- Participants will demonstrate a substantive, measurable increase in language proficiency (verified through testing).
- Alumni will continue their foreign language study, apply their linguistic skills in their chosen career fields, and/or participate in other exchanges to the participating countries.
- Participants will demonstrate a deeper understanding of the host country's society, institutions, and culture.

Capacity of Administering Organization: U.S. applicant organizations or consortia must have the necessary capacity in the partner country or countries to implement the program through either their own offices or partner institutions. Organizations may demonstrate their organization's direct expertise, or they may partner with other organizations to best respond to the requirements outlined in the RFGP. Organizations that opt to work in sub-grant arrangements should clearly outline all duties and responsibilities of the partner organization, ideally in the form of sub-grant agreements and accompanying budgets.

Organizations or consortia applying for this grant must demonstrate their (or their partners') capacity for conducting projects of this nature, focusing on three areas of competency: (1) Provision of related foreign language instruction programs and provision of educational and cultural exchange activities as outlined in this document; (2) language level-appropriate programming for the target audience; and (3) experience in conducting programs in the proposed partner country or countries. Applicant organizations must present a proposal that clearly indicates the building of new and increased institutional language study capacity overseas for these summer institutes.

Institute Information: Each six- to ten-week overseas summer institute for undergraduate and graduate students should focus on language study and should include 4 to 6 hours per day of formal and informal language training. The cooperating agency should provide multiple levels of language instruction. While teaching conversational vocabulary will be necessary to help students cope with their immersion setting, classes should also provide formal instruction in grammar, vocabulary, and pronunciation, and will cover speaking, listening, reading, and writing, including new alphabets.

The institutes should also include a secondary cultural immersion component designed to reinforce language learning with planned excursions, which give the students the opportunity to participate in activities designed to teach them about community life and the culture and history of the host country. The program activities will introduce the students to the community as feasible and appropriate and will include educational excursions that serve to enhance the visitors' understanding of contemporary society, culture, media, political institutions, ethnic diversity, history, and environment of the region.

Staff should be physically present and available to support the participants during the course of the institute.

The Bureau reserves the right to make changes in eligible countries for programming based on safety and security concerns.

Country and Language Information:

For Arabic language institutes: Applicant organizations should present plans for not less than 150 participants in the Arabic language institutes. Arabic language instruction should be available for three levels of students: elementary, intermediate, and advanced. Approximately 100 of the participants should receive instruction at the intermediate/advanced levels while the rest should receive elementary level instruction. The proposed institute should make explicit accommodation for learners of varying skill levels.

Classroom instruction should emphasize Modern Standard Arabic with class time devoted also to colloquial Arabic, as appropriate. Students should also gain knowledge of colloquial Arabic through informal study and through interaction with their host community.

Some previous study of the language—at least equivalent to a university semester—is required for participants in the elementary Arabic institutes. Participants in the intermediate/advanced Arabic institutes will have already studied the language formally for at least 2 years by the start of the summer program. The institute should devise a plan to test all students prior to placement to determine the appropriate level of instruction.

Applicant organizations should plan to send students to a country in North Africa, the Middle East, or the Gulf region, with the exception of Algeria, Iraq, Israel, Libya, Lebanon, Saudi Arabia, and West Bank/Gaza. Applicant organizations must include venues in Egypt, Jordan, and Morocco.

For Chinese language institutes: Applicant organizations should present plans for not less than 40 participants in the Chinese language institutes. Chinese language instruction should be available for two levels of students: intermediate and advanced. The proposed institute should make explicit accommodation for learners of varying skill levels.

Students should study Mandarin in class and through informal study and interaction with their host community. Teaching materials used in the program should be available in both simplified and traditional character versions. The Hanyu pinyin romanization system should be used.

Participants in the intermediate/advanced Chinese institutes will have already studied the language formally for at least 2 years by the start of the summer program. The institute should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to send students to the People's Republic of China (mainland China) for study.

For Indic language institutes: Applicant organizations should present plans for not less than 72 participants in the Indic language institutes. For these language institutes, not less than 18 students must learn Bengali/Bangla, not less than 18 must learn Hindi, not less than 18 must learn Punjabi, and not less than 18 must learn Urdu. Instruction should be available for each of these Indic languages. All Indic language instruction should be available for three levels of students: elementary, intermediate, and advanced. Overall, 40 of the participants should receive instruction at the intermediate/advanced level while the rest should receive elementary level instruction. The proposed institute should make explicit accommodation for learners of varying skill levels.

Students should learn Indic languages in class and through informal study and interaction with their host community.

Some previous study of the language—at least equivalent to a university semester—is required for participants in the elementary Indic institutes. Participants in the intermediate/advanced Indic institutes will have already studied the relevant language formally for at least 2 years by the start of the summer program. The institute should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to send students to Bangladesh and/or India. The Bureau will consider proposals for Pakistan, but reserves the right to alter eligible countries based on safety and security concerns. Applicants proposing Pakistan should propose an alternate site should conditions not permit placement of students in Pakistan.

For Korean language institutes: Applicant organizations should present plans for not less than 25 participants in the Korean language institutes. Korean language instruction should be available for three levels of students: elementary, intermediate, and advanced. Ten of the participants should receive instruction at the intermediate/advanced level while the rest should receive elementary level instruction. The proposed institute should make explicit accommodation for learners of varying skill levels.

Students should learn Korean in class and through informal study and interaction with their host community. The Hangeul alphabet system should be used. Students should also be introduced to NAKL.

Some previous study of the language—at least equivalent to a university semester—is required for participants in the elementary Korean institutes. Participants in the intermediate/advanced Korean institutes will have already studied the language formally for at least two years by the start of the summer program. The institute should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to send students to South Korea.

For Persian language institutes: Applicant organizations should present plans for not less than 15 participants in the Persian language institutes. Farsi language instruction should be available for three levels of students: beginning or introductory, intermediate, and advanced. Seven of the participants should receive instruction at the intermediate/advanced level while the rest should receive beginning or introductory level instruction. The proposed institute should make explicit accommodation for learners of varying skill levels.

Students should learn Farsi in class and through informal study and interaction with their host community.

No prior study of the language is required for participants in the beginning or introductory Farsi institutes. Participants in the intermediate/advanced Farsi institutes will have already studied the language formally for at least two years by the start of the summer program. The institute should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to send students to Tajikistan for study of Farsi.

For Russian language institutes: Applicant organizations should present plans for not less than 30 participants in the Russian language institutes. Russian language instruction should be available for two levels of students: intermediate and advanced. The proposed institute should make explicit accommodation for learners of varying skill levels.

Students should learn Russian in class and through informal study and interaction with their host community.

Participants in the intermediate/advanced Russian institutes will have already studied the language formally for at least two years by the start of the summer program. The institute should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to send students to Russia. Location of the institute(s) should be outside of Moscow and St. Petersburg in order to maximize language-learning opportunities.

For Turkic language institutes: Applicant organizations should present plans for not less than 35 participants in the Turkic language institutes. Turkish language instruction should be available for three levels of students: beginning or introductory, intermediate, and advanced. Fifteen of the participants should receive instruction at the intermediate/advanced level while the rest should receive beginning or introductory level instruction. The proposed institute should make explicit accommodation for learners of varying skill levels.

Students should learn Turkish in class and through informal study and interaction with their host community.

No prior study of the language is required for participants in the beginning or introductory Turkish institutes. Participants in the intermediate/advanced Turkish institutes will have already studied the language formally for at least two years by the start of the summer program. The institute should devise a plan to test intermediate/advanced students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to send students to Turkey. Location of the institute(s) should be outside of Istanbul in order to maximize language-learning opportunities.

Participant Recruitment and Selection: The cooperating agency will recruit, screen, and select U.S. citizen undergraduate and graduate students for the program. Selected participants should show strong evidence of ability to succeed in an intensive, demanding language study program and should represent the diversity of the United States. Diversity addresses differences of religion, ethnicity, socio-economic status, and physical abilities. Selected students should also represent diversity of geography, institutional type, and fields of study, a balance between genders, and a balance between undergraduate and graduate students. Preference should be given to candidates with no previous study overseas. Students should have completed at least their first year of undergraduate study by the summer of 2007. Selected students should demonstrate an intention of continuing their language study beyond the scholarship period and applying their critical language skills later in their professional careers. The students' language skills at the start of the institute should meet the requirements for each language outlined above.

The Bureau should be consulted regarding the selection of candidates and will approve the selection of finalists and alternates for the program.

Information about the program, along with all accompanying application materials, should be posted online. Applicant organizations should propose a comprehensive outreach plan under Tab E to publicize and recruit for the program at U.S. colleges and universities nationwide.

The Bureau requests that student applicants apply to the program through an online application system. An alternate paper-based application should also be provided for those candidates unable to apply online. These paper-based applications, however, must be entered into the online system by grantee organization program staff. All application materials should be available in a sortable, searchable, electronically accessible database format that can be easily shared with the Bureau upon request.

Orientations: The grantee organization will organize a substantive, in-person, pre-departure orientation for all students. Working in consultation with ECA, the orientation should include a security briefing on the host country. The grantee organization may also need to work in consultation with ECA and the U.S. Embassy in the host country to arrange an in-country security briefing to be held by the Embassy's Regional Security Officer. The orientations

should take place in Washington, DC. The applicant organization should provide a compelling justification if they propose to host these orientations in any other location. Comprehensive information packets should be provided to all orientation participants. A sample of the contents of these packets should be provided under Tab E.

At the end of the language study exchange, the cooperating agency will organize an in-country closing workshop for the students prior to departure from their host country, which will focus on summarizing the experience, completing an evaluation, language testing, developing plans for activities at home, and preparing for re-entry.

Project Activities: Describe in sufficient detail the major components of the program, including project planning; publicity and recruitment, including responding to and management of a significant volume of queries and applications; the host venues; selection; orientations (U.S. and overseas); assessment and testing; language instruction; educational enrichment activities; cultural activities; participant monitoring; and logistics.

Assessment and Testing: Standardized pre- and post-institute testing should be done to determine participants' language proficiency and progress.

Pre- and post-testing should measure the student's advancement in language learning. The Bureau will work with the cooperating agency to develop and implement an instrument to measure students' increased language proficiency due to participation in this program. The data need to be analyzed and reported by the cooperating agency to ECA for the program, disaggregated by institute.

Alumni Tracking and Follow-On Activities: Alumni activities are an important part of ECA's academic exchange programs. Alumni programming in the form of newsletters and listservs provides critical program follow-on and maximizes and extends the benefit of the participants' program. The cooperating agency is strongly urged to outline how it will creatively organize and financially support alumni activities at a minimal cost to ECA.

Publicity: The proposal must describe how these intensive summer language institutes will be publicized to media outlets, including print, online, and broadcast to reach the widest possible audience of qualified students. The cooperating agency will also work closely with ECA to publicize the successes of the students involved in these institutes, as well as the National Security Language Initiative as a whole. The applicant organization should provide information on successful media outreach campaigns it has conducted in the past under Tab E.

In a cooperative agreement, ECA/A/E is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E activities and responsibilities for this program are as follows:

(1) Review all print and online materials (including, but not limited to, those for recruitment and orientation) regarding the institutes before publication and dissemination. Review does not include instructional materials, though the Bureau does reserve the right to request these materials as needed.

(2) Work with the cooperating agency on a recruitment strategy.

(3) Work with the cooperating agency to publicize the program, and the National Security Language Initiative (NSLI) as a whole, through various media outlets.

(4) Review and approve application forms.

(5) Participate in selection committees.

(6) Confirm final selection of principal and alternate candidates.

(7) Work with cooperating agency to implement participant orientations.

(8) Work with cooperating agency to offer standardized pre- and post-institute testing of participants' language proficiency and progress.

(9) Review project activity schedules for all institutes.

(10) Be kept informed by the cooperating agency of its progress at each stage of the project's implementation through timely updates.

(11) Provide Bureau-approved evaluation surveys for completion by participants after completion of program.

(12) Provide substantive input on alumni activities and follow-up events.

Note: All materials, publicity, and correspondence related to the program must acknowledge this as a program of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. The Bureau will retain copyright use of and distribute materials related to this program as it sees fit.

Funding: Grant funding will support costs including recruitment and selection of participants, testing, orientation, travel, tuition and maintenance costs, educational enhancements, cultural and social activities, alumni activities, and administrative costs.

Programs must comply with J–1 visa regulations. Please refer to the Project Objectives, Goals, and Implementation (POGI) document and the Proposal Submission Instructions for further information.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2007.

Approximate Total Funding: $6,000,000, pending availability of funds.

Approximate Number of Awards: 1.

Ceiling of Award Range: $6,000,000.

Anticipated Award Date: Pending availability of funds, the proposed start date is February 15, 2007.

Anticipated Project Completion Date: Approximately 14 to 18 months after the start date, depending on the proposed program plan.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, ECA reserves the right to renew the grant for two additional fiscal years.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in

Bureau funding. ECA anticipates awarding a single grant not exceeding $6,000,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau urges applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 *Contact Information to Request an Application Package:*

Please contact the Office of Academic Exchange Programs (ECA/A/E), Room 234, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 453–8135, Fax (202) 453–8125, *E-mail: ManleyHL@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/A/E–07–01) located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from *grants.gov.* Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Bureau Special Projects Officer Heidi Manley and refer to the Funding Opportunity Number located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the *Grants.gov* Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 form that is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. *Please take into consideration the following information when preparing your proposal narrative:*

IV.3d.2 *Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation:* Ideally programs use logic models, a system that is designed to link a program's overall goals and objectives to inputs, outputs and outcomes. Inputs are resources, such as time money, materials, supplies and personnel, which are consumed to produce outputs and outcomes. Outputs are the immediate products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Expected program outcomes, as they relate to the program goals set out in the RFGP, include:

(1) Participant satisfaction with the program and exchange experience.

(2) Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

(3) Participant behavior, concrete actions to apply knowledge in school or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants and host families, and others.

Successful monitoring and evaluation depend heavily on setting clear program objectives, outcomes, and outputs at the outset of a program. A draft monitoring and evaluation plan should include the following components:

(1) A description of the program's goals and objectives and anticipated outputs and outcomes.

(2) A description of how the cooperating agency and host institutions intend to monitor and report program activities at the output level. This may include the use of participant surveys that focus on logistics and

administration, focus groups and interviews.

(3) Incorporation of pre- and post-testing for language acquisition to measure one of the program's outcomes. The Bureau will work with the cooperating agency to develop and implement an instrument to measure students' increased language proficiency due to participation in this program. The data need to be analyzed and reported by the cooperating agency to ECA for the program, disaggregated by institute.

(4) Incorporation of three surveys using ECA's E–GOALS to measure additional program outcomes. Administered by the Bureau's Office of Policy and Evaluation (ECA/P), E–GOALS is an online system for surveying program participants and collecting data about program performance. All program participants will be required to take three online surveys:

(a) Standardized pre-program surveys, at the beginning of the program;

(b) Standardized post-program surveys, at the end of the program; and

(c) Standardized follow-up surveys, approximately six months after the conclusion of the program.

These surveys are designed to help the cooperating agency and ECA assess: student satisfaction with the program; student attitudes and views; the extent of learning and skill development (including leadership); reliance on new learning and skills in their studies, at work, and in their communities; and their efforts to share new ideas, knowledge, and insights. Included in these surveys are questions specific to ECA's internal reporting.

The cooperating agency will be expected to work with the Program Officer and an evaluator from the Office of Policy and Evaluation to refine and implement the survey instruments. To ensure proper implementation of E–GOALS, the cooperating agency will be required to:

- Provide the Program Officer and E–GOALS evaluator with all contact information and bio-data of program participants.
- Provide all participants with information about the E–GOALS survey. Students must be advised that they are *required* to take all three surveys, assuring them that the surveys are completely confidential, anonymous, and used only for evaluative purposes.
- Notify students of the E–GOALS survey link, information about E–GOALS and survey instructions.
- Allocate time for E–GOALS surveying prior to the students departure from their return to the U.S. and at the end of the program.
- Send reminder notices to students to take the follow-up survey.

(5) A description of any additional methods planned to supplement information obtained through language proficiency surveys and E–GOALS to measure progress towards achievement of the program's objectives, such as the use of focus groups and interviews, and how the data will be analyzed and reported.

Overall, the quality of the applicant organization's monitoring and evaluation plan will be judged on how well it (1) specifies intended goals and objectives; (2) gives clear descriptions of how each outcome and output will be measured; (3) identifies when particular outcomes and outputs will be measured; and (4) incorporates and describes data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups).

The cooperating agency will be required to provide reports analyzing evaluation findings to the Bureau in regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. *Describe in your proposal your plans for:* overall program management, staffing, coordination with ECA and with overseas institutes enrolling clusters of students, recruitment, testing, orientation, and cultural enrichment opportunities for students. Please provide a staffing plan that outlines the responsibilities of each staff person and explains which staff members will be accountable for each program responsibility.

IV.3e. *Please take the following information into consideration when preparing your budget:*

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Grant requests should not exceed $6,000,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should also provide copies of any sub-grant agreements that would be implemented under terms of this award.

IV.3e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the POGI and the PSI documents in the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. *Application Deadline and Methods of Submission:*

Application Deadline Date: January 5, 2007.

Reference Number: ECA/A/E–07–01.

Methods of Submission

Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

2. Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 *Submitting Printed Applications:* Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original, one fully-tabbed copy, and eight copies of the application with Tabs A–E (for a total of ten copies) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E–07–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above

Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2. *Submitting Electronic Applications:* Applicants have the option of submitting proposals electronically through *Grants.gov* (*http://www.grants.gov*). Complete solicitation packages are available at *Grants.gov* in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the *Grants.gov* registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with *Grants.gov.*

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through *Grants.gov.*

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support; *Contact Center Phone:* 800–518–4726. *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from *grants.gov* upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the *Grants.gov* web portal to ensure that proposals have been received by *Grants.gov* in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. *Review Process:* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Please see proposal review criteria in the accompanying Project Objectives, Goals, and Implementation (POGI) document.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:* Office of Management and Budget Circular A 122, ''Cost Principles for Nonprofit Organizations.'' Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.'' OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''. OMB Circular No. A 110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus two copies of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

2. Interim program and financial reports that include information on the progress made on the program plan and program results to date.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. *Program Data Requirements:* Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

1. Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

2. Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Heidi Manley, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, ECA/A/E–07–01, U.S. Department of State, SA–44, 301 4th Street, SW., Room 234, Washington, DC 20547, Telephone (202) 453–8135, Fax (202) 453–8125, E-mail *ManleyHL@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E–07–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 25, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–18280 Filed 10–30–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5588]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces several meetings of the International Telecommunication Advisory Committee (ITAC).

The International Telecommunication Advisory Committee (ITAC) will meet to prepare advice on proposed U.S. contributions to the Permanent Executive Committee of the Organization of American States Inter-American Telecommunication Commission (COM/CITEL) on Wednesday November 29, 2006 2–4 p.m. eastern time in the Washington DC metro area.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare advice on proposed U.S. contributions to Study Group 17 (Security, languages and telecommunication software) of the International Telecommunication Union's Telecommunication Standardization Sector on Tuesday November 14, 2006 from 10–noon eastern time by conference call.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare advice on proposed U.S. contributions to the Committee on Information Services and Policy (CISP) and Working Party on the Information Economy (WPIE) meetings of the Organization for Economic Co-operation and Development (OECD) on November 16 and 30, 2006 10:30 a.m.–noon eastern time in room 2533A in the Harry S Truman State Department building.

These meetings are open to the public, and conference bridges may be available. Further information may be obtained from the Secretariat *minardje@state.gov*, telephone 202–647–3234.

Date: October 23, 2006.

Anne D. Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Multilateral Affairs, Department of State.

[FR Doc. E6–18269 Filed 10–30–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5600]

U.S. Department of State Advisory Committee on Private International Law: Study Group on Consumer Protection

The Department of State Advisory Committee on Private International Law will hold a study group to discuss the various proposals on consumer protection which have been made in connection with the Organization of American States' Seventh Inter-American Specialized Conference on Private International Law. The meeting will take place Thursday, November 9th from 10 a.m. until 1 p.m. at the International Law Institute, The Foundry Building, 1055 Thomas Jefferson St., NW., Washington, DC.

Public Participation: Advisory Committee Study group meetings are open to the public. Persons wishing to attend need to provide in advance, not later than Monday, November 6, their name, address, contact numbers, including e-mail address if available, and affiliation(s) to Trisha Smeltzer at *smeltzertk@state.gov*. Additional meeting information can be obtained from Ms. Smeltzer at 202–776–8423. Persons who cannot attend but who wish to comment on any of the topics referred to are welcome to do so in writing or by e-mail to Michael Dennis at *DennisMJ@state.gov* or Harold Burman at *BurmanHS@State.gov.*

Dated: October 24, 2006.

David P. Stewart,

Assistant Legal Advisor, Office of Private International Law, Department of State.

[FR Doc. E6–18274 Filed 10–30–06; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 8, 2006, vol. 71, no. 152, page 45092. The collection of information is necessary for gathering data concerning potential new hires for the FAA.

DATES: Please submit comments by November 30, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Application for Employment with the Federal Aviation Administration.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0597.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 81,526 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1.5 hours per response.

Estimated Annual Burden Hours: An estimated 123,000 hours annually.

Abstract: The collection of information is necessary for gathering

data concerning potential new hires for the FAA. The information will be used to evaluate the qualifications of applicants for a variety of positions. Without this information there would be no reliable means to accurately evaluate applicants' skills knowledge and abilities to perform the duties of these positions.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 24, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25553]

Request for Public Comment on Noise Analysis for Fort Lauderdale-Hollywood International Airport, Broward County, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The Federal Aviation Administration (FAA) is requesting public comments on a Noise Analysis that was prepared for the Fort Lauderdale-Hollywood International Airport (FLL). This Analysis identifies noise impacts in the areas surrounding FLL during a 12-month period from July 2003 to June 2004 and a 12-month period from April 2005 to March 2006. This Noise Analysis is being provided for public comment as part of a settlement agreement between the FAA and Broward County related to runway utilization at FLL.

DATES: The public is invited to comment on this Noise Analysis on or before November 30, 2006.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25553 at the beginning of your comments and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.gov.* You may review the public docket containing comments to this notice in person in the Dockets Office between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.* FAA will respond in writing to all substantive, properly submitted comments.

FOR FURTHER INFORMATION CONTACT: Questions concerning the public comment process should be directed to the FAA contact person, Mr. Miles T. Bennett, Office of Airport Planning and Programming, Planning and Environmental Division, APP–400. Mr. Bennett can be contacted in writing at Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Attn: APP–400; or by e-mail at *Tom.Bennett@faa.gov;* or via telephone at (202) 267–3263. The Integrated Noise Model (INM) input data used in preparing the noise contours is available upon request from the point of contact.

SUPPLEMENTARY INFORMATION: This Noise Analysis is separate and independent from the Environmental Impact Statement (EIS) process initiated by the FAA for a proposed runway project on January 19, 2005. 70 FR 3095 (January 19, 2005). The 2004 Map was previously provided for public review during the scoping process for the above EIS. The 2005 Map derives from noise analysis conducted for the above EIS.

The purpose of this Noise is to notify Federal, State, local government agencies, and the public about the availability of the Noise Analysis and the opportunity for review and comment. The FAA is also announcing the availability of the Noise Analysis in major local newspapers in the vicinity of FLL.

Background

Fort Lauderdale-Hollywood International Airport (FLL) is owned and operated by, and lies within, Broward County, Florida. The cities of Dania Beach, Hollywood, Davie, and Fort Lauderdale and adjacent, or in close proximity, to the airport. The airport is bordered by Interstate 595 to the north, Griffin Road to the south, U.S. Route 1 to the east and Interstate 95 to the west.

In 1989, FAA accepted Noise Exposure Maps (NEMs) submitted by Broward County for FLL. FAA also received and approved a Noise Compatibility Program (NCP) for FLL pursuant to 49 U.S.C. 47501 *et seq.,* as implemented by 14 CFR part 150 (part 150). The FAA reviews airport noise compatibility programs for consistency with statutory and regulatory criteria. 65 FR 43802, 43809 (July 14, 2000). To qualify for approval, program measures, among other things, (1) Must be reasonably consistent with the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses; (2) must not derogate safety or adversely affect the safe and efficient use of airspace; (3) must not impose an undue burden on interstate or foreign commerce; (4) must not be unjustly discriminatory or violate other airport grant agreement assurances; and (5) must be consistent with the powers and responsibilities of the FAA Administrator. The FAA must approve NCPs that meet the specified criteria. FLL's approved 1989 NCP included an informal runway use program. Under this runway use program the northernmost parallel runway at FLL, Runway 9L/27R, was designated as the ''preferred runway'' for turbojet departures and arrivals. FLL has three runways, two parallel east-west runways and a crosswind runway (generally running from the northwest to the southeast). The northernmost parallel runway is as noted above; the southernmost parallel runway is 9R/27L; the crosswind runway is 13/31.

Pursuant to FAA Order 8400.9, National Safety and Operational Criteria for Runway Use Programs, and FAA order 7110.65M, ''Air Traffic Control'', Pilot/Controller Glossary, a runway use program is a runway selection plan designed to enhance noise abatement efforts. The Air Traffic Service (now ''Air Traffic Operations'') administers

runway use programs as ''Formal'' or ''Informal.'' Formal programs are defined and acknowledged in a Letter of Understanding between the Office of Flight Operations, Air Traffic Service, the airport proprietor, and the users. Once established, participation in a formal program is mandatory for aircraft operators and pilots as provided for in 14 CFR 91.129(h). An informal runway use program does not require a Letter of Understanding, and participation in the program is voluntary for aircraft operators/pilots.

In 1995, Broward County submitted revised NEMs and a revised NCP for FLL. The NCP included a recommendation to continue the informal runway use program. FAA approved continuation of the informal runway use program as a voluntary measure. About 10 years later, by letter dated June 23, 2005, FAA advised Broward County that air traffic had recently increased to levels that periodically exceeded the capacity of the noise abatement runway, 9L/27R, resulting in delays affecting the national airspace system. FAA announced that the non-preferred runways would experience an increase in use when the capacity of the preferred runway was exceeded in the future. The June 23, 2005, letter expressly noted that FAA was not proposing to change the informal runway use program; however, when demand for the preferred runway exceeded its capacity, FAA would make use of all available runways. Prior to June 23, 2005, occasionally Runway 13/31, and more frequently Runway 9L/27R, were made available for use by turbojet aircraft in some situations. The County specifically agreed to allow use of Runway 13/31 when Runway 9L/27R was being resurfaced and to allow use of both Runway 13/31 and 9R/27L between three and four hours per year during air-shows. In addition, Runway 13/31 was used by turbojet aircraft during aircraft emergencies, crosswind conditions, and severe weather conditions. In recent years Runway 9R/27L has been used for turbojet aircraft on a limited basis, during peak demand hours.

Runway use at FLL since June 23, 2005, can generally be described as follows: In the early part of the day, air carrier and turbojet traffic primarily consists of arrivals, with relatively few departures. The capacity of the preferred runway is typically not exceeded during this period. As the day progresses, the number of air carrier and turbojet arrivals progressively increases while air carrier and turbojet departures significantly increases and the capacity of 9R/27L may be exceeded. It is at this point that runway 9R/27L is utilized to alleviate departure and/or arrival backlog that runway 9L/27R cannot accommodate. Occasionally, the crosswind runway must be tactically used to alleviate departure and/or arrival baggage. This permits ATO to reduce the departure/arrival backlog more quickly and allows the airport to return to operating on the parallel runways. Typically, in the latter part of the day/evening, the air carrier and turbojet traffic levels off and the preferred runway is eventually able to handle the air carrier and turbojet traffic demand. As shown in the runway and utilization data described in this Request for Public Comment, the change in use of runway 13/31 following June 23, 2005, has been minor and did not change the noise contour. Setting aside the proposed runway development that is the subject of the current EIS, FAA does not anticipate any major changes in future runway utilization unless there is a major change at the airport (*i.e.*, number of operations, runway characteristics, etc.).

This Noise Analysis discloses the noise impacts at FLL during a 12-month period from July 2003 to June 2004 and a 12-month period from April 2005 to March 2006. The Noise Analysis includes two maps that identify land uses in areas surrounding FLL that experience noise levels of 65, 70 and 75 DNL dB or greater. The noise contours are superimposed over the land uses. The 2004 and 2005 maps are available on FAA's Web site, as noted below.

The first map represents the noise conditions at FLL for the 12-month period from July 2003 through June 2004 (the 2004 map: See *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/southern/environmental/media/fll_exhib1_2004_baseline.pdf*). Between July 2003 and June 2004, 304,430 annual operations occurred at FLL, which equates to 834 average-annual day operations. The second map represents the noise conditions at FLL for a 12-month period between April 2005 and March 2006 (the 2005 map: See *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/southern/environmental/media/fll_exhib2_2005_baseline.pdf*). Between April 2005 and March 2006, 320,400 annual operations occurred at FLL, which constitutes 878 average-annual day operations. A comparison of the two maps reflects how noise impacts changed between 2004 and 2005, including any effect of increasing use of the non-preferred runways during periods when demand exceeds the capacity of the north parallel runway (See *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/southern/environmental/media/fll_exhib3_2004_2005_baseline.pdf*).

Each map was generated using FAA's Integrated Noise Model (INM) Version 6.1. Inputs to the INM include the runway length and direction, number of aircraft operations (the landing or take-off of an aircraft is considered one ''operation'') during the period evaluated, the types of aircraft flown, the time of day when they were flown, how frequently each runway was used for arriving and departing aircraft, the routes of flight used to and from the runways (flight tracks), and ground runup activity. The INM calculates noise exposure for the area around the airport and outputs contours of equal noise exposure. The same flight tracks were used in preparing both maps because no change in the flight tracks occurred during the relevant period.

Aircraft types and times of operations were determined using Official Airline Guide (OAG) data, landing fee reports for the relevant periods, and the Airports Noise and Operations Management System (ANOMS) data. The ANOMS data was provided by Broward County.

The number of housing units, number of people, and area within each noise exposure contour for 2004 is illustrated below. This data compiled using parcel records from the Broward County property appraiser's office and through a review of aerial photography.

Summary units 2004	Multi family	Single family	Mobile home	Total units
65 DNL	11	10	36	57
70 DNL	0	3	0	3
75 DNL	0	0	0	0
65+	11	13	36	60

Summary Population 2004	Multi family	Single family	Mobile home	Total pop
65 DNL	29	24	60	113
70 DNL	0	9	0	9
75 DNL	0	0	0	0
65+	29	33	60	122

AREA EXPOSED TO VARIOUS NOISE LEVELS (IN SQUARE MILES)

2004 map

Noise level	Area on 2004 map	Area over airport property	Area over Atlantic Ocean
65 DNL	3.0	0.5	0.4
70–75 DNL	1.3	0.4	0.0
75+ DNL	0.9	0.8	0.0
Total 65+ DNL	5.2	1.7	0.4

Source: Landrum & Brown, 2004.

Approximately 5.2 square miles are within the 2004 Maps' 65+ DNL noise contour. However, 2.1 square miles of that is over either the airport or the Atlantic Ocean.

The number of housing units, number of people, and area within each noise exposure contour for 2005 is illustrated below.

Summary units 2005	Multi family	Single family	Mobile home	Total units
65 DNL	2	2	0	4
70 DNL	0	3	0	3
75 DNL	0	0	0	0
65+	2	5	0	7

Summary Population 2005	Multi family	Single family	Mobile home	Total pop
65 DNL	4	5	0	9
70 DNL	0	9	0	9
75 DNL	0	0	0	0
65+	4	14	0	18

[2005 Map's Noise Contours]

Noise level	Area on 2005 map	Area over airport property	Area over Atlantic Ocean
65–70 DNL	2.8	0.6	0.3
70–75 DNL	1.3	0.6	0.0
75+ DNL	0.8	0.7	0.0
Total 65+ DNL	4.9	1.9	0.3

Source: Landrum & Brown, 2006.

Approximately 4.9 square miles are within the 2005 Map's 65+ DNL noise contour. However, 2.2 square miles of that area is over either airport property or the Atlantic Ocean.

Comparison of 2004 and 2005 Noise Contours:

Number of Operations and Fleet Mix: Annual operations increased by 15,970 between July 2003 and March 2006, which results in an increase of 44 average-annual day operations. This increase occurred in the air carrier and commuter/air tai categories, while the general aviation category experienced a decrease. In addition to the increase in operations, there was also a change in the fleet mix of the air carrier and commute/air taxi categories. The air carrier fleet experienced a reduction in the older noisier aircraft, such as the 727–200 (Hushkitted), 737–200 (Hushkitted) and the MD90 aircraft, and an increase in newer quieter aircraft, such as Airbus 319, 320 and 321 aircraft. The commute/air taxi agency experienced an increase in regional jets and turboprop aircraft. The percentage of nighttime operations decreased from the 2004 Map to the 2005 Map. The percent of nighttime operations for the 2004 Map was approximately 11 percent while the percentage of nighttime operations for the 2005 Map decreased to approximately 10 percent.

Runway Utilization: The runway utilization at FLL is comparable between the period covered by the 2004 Map and the 2005 Map. The minor difference in runway utilization percentages is within a normal variance for a large airport when comparing data from different time periods. The 2005 map reflects increase use of Runway 9R

by general aviation jets and commuter propeller aircraft. Runway end utilization percentages reflect an average annual day.

RUNWAY END UTILIZATION 2004 MAP

[Fort Lauderdale—Hollywood International Airport]

Runway user group	Percentage						
	09L	09R	13	27R	27L	31	Total
Air Carrier/Cargo							
Takeoff.							
Heavy Jet.							
Daytime	77.1	0.0	0.5	21.8	0.0	0.6	100
Nighttime	78.4	0.0	0.5	20.4	0.0	0.7	100
Landing.							
Daytime	74.9	0.0	1.3	23.3	0.0	0.5	100
Nighttime	79.6	0.0	1.0	19.2	0.0	0.2	100
Air Carrier/Cargo							
Takeoff.							
Large Jet.							
Daytime	77.6	0.0	0.5	21.4	0.0	0.5	100
Nighttime	78.1	0.0	0.4	20.9	0.0	0.6	100
Landing.							
Daytime	76.1	0.0	1.6	22.1	0.0	0.2	100
Nighttime	79.3	0.1	0.1	19.3	0.0	0.4	100
Commuter/Air Taxi							
Takeoff.							
Commuter Jet.							
Daytime	76.7	0.9	0.6	20.7	0.3	0.8	100
Nighttime	78.5	0.0	0.6	18.4	0.0	2.5	100
Landing.							
Daytime	73.5	1.9	1.9	21.6	0.5	0.6	100
Nighttime	74.3	0.4	1.5	22.8	0.1	0.9	100
Takeoff.							
Commuter Prop.							
Daytime	57.2	20.0	1.4	12.8	7.0	1.7	100
Nighttime	71.4	1.8	2.5	19.5	0.9	3.9	100
Landing.							
Daytime	40.2	33.6	3.7	12.7	8.8	1.0	100
Nighttime	70.0	1.7	2.3	25.2	0.8	0.0	100
General Aviation/Military							
Takeoff.							
General Aviation.							
Jet Daytime	74.9	1.6	0.6	20.2	1.0	1.7	100
Nighttime	77.8	0.3	0.8	17.5	0.1	3.5	100
Landing.							
Daytime	71.4	3.2	2.0	22.2	0.9	0.3	100
Nighttime	76.5	0.3	3.2	18.1	0.1	1.8	100
Takeoff.							
General Aviation.							
Prop Daytime	52.1	23.0	2.6	10.5	9.1	2.7	100
Nighttime	75.1	0.5	2.7	17.8	0.0	3.9	l00
Landing.							
Daytime	32.1	41.4	2.6	11.0	11.3	1.6	100
Nighttime	74.2	0.6	2.1	22.1	0.3	0.7	100

Daytime=7:00 a.m.–9:59 p.m.
Nighttime=10:00 p.m.–6:59 a.m.
Source: 2003, 2004 Airports Noise and Operations Management System (ANOMS) data, Broward County Aviation Department.

RUNWAY END UTILIZATION 2005 MAP

[Fort Lauderdale—Hollywood International Airport]

Runway user group	Percentage						
	09L	09R	13	27R	27L	31	Total
Air Carrier/Cargo							
Takeoff.							
Heavy Jet.							
Daytime	77.0	0.0	0.3	23.0	0.0	0.2	100
Nighttime	76.8	0.0	0.1	23.0	0.0	0.1	100
Landing.							
Daytime	77.5	0.0	0.5	21.9	0.0	0.1	100
Nighttime	77.8	0.0	1.5	20.6	0.0	0.1	100

RUNWAY END UTILIZATION 2005 MAP—Continued

[Fort Lauderdale—Hollywood International Airport]

Runway user group	Percentage						
	09L	09R	13	27R	27L	31	Total
Air Carrier/Cargo							
Takeoff.							
Large Jet.							
Daytime	78.1	0.0	0.1	21.7	0.0	0.1	100
Nighttime	77.4	0.0	0.2	22.2	0.0	0.2	100
Landing.							
Daytime	77.5	0.0	0.5	21.9	0.0	0.1	100
Nighttime	77.8	0.0	1.8	20.3	0.0	0.1	100
Commuter/Air Taxi							
Takeoff.							
Commuter Jet.							
Daytime	78.1	0.0	0.1	21.7	0.0	0.1	100
Nighttime	77.4	0.0	0.2	22.2	0.0	0.2	100
Landing.							
Daytime	77.5	0.0	0.5	21.9	0.0	0.1	100
Nighttime	77.8	0.0	1.8	20.3	0.0	0.1	100
Takeoff.							
Commuter Prop.							
Daytime	43.2	34.2	1.6	12.0	8.2	0.8	100
Nighttime	70.9	3.2	2.4	19.6	1.5	2.4	100
Landing.							
Daytime	25.4	53.3	0.5	19.2	1.5	0.1	100
Nighttime	81.6	0.1	1.5	16.6	0.1	0.1	100
General Aviation/Military							
Takeoff.							
General Aviation.	66.5	10.4	0.8	16.8	4.7	0.8	100
Jet Daytime	66.5	10.4	0.8	16.8	4.7	0.8	100
Nighttime	77.7	0.2	1.3	20.1	0.1	0.6	100
Landing.							
Daytime	58.3	19.9	0.4	14.9	6.4	0.1	100
Nighttime	75.9	0.2	2.8	20.5	0.5	0.1	100
Takeoff.							
General Aviation.							
Prop Daytime	47.0	28.5	3.0	9.7	10.0	1.8	100
Nighttime	74.5	4.5	2.0	13.1	0.5	5.4	100
Landing.							
Daytime	22.7	56.4	0.4	5.7	14.7	0.1	100
Nighttime	79.7	0.3	1.9	17.4	0.6	0.1	100

Daytime=7:00 a.m.–9:59 p.m.
Nighttime=10:00 p.m.–6:59 a.m.
Source: 2005, 2006 Airports Noise and Operations Management System (ANOMS) data, Broward County Aviation Department.

Flight Tracks: No change in the flight tracks occurred between July 2003 and March 2006.

Ground Runup Noise: There was a small increase in the number of engine runups that is reflected in the 2005 Map. This change was in proportion to the increase or decrease in the overall operations of the types of aircraft performing the runups.

Noise Contours: The 2005 noise contour is smaller than the 2004 contour due to the changes in fleet mix and the decrease in the percentage of nighttime operations. The shape of the noise contours off all runway ends remains the same, which is reflective of no significant changes in runway end utilization or flight tracks. The minor change in the utilization of Runway 13/31 did not change the noise contour.

The two areas where differences in the noise contours occur are to the west of the airport, off Runway 9L/27R and to the northwest of the airport, off Runway 13/31 (See *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/southern/environmental/media/fll_exhibx_housing_diff_2004_2005.pdf*). For the area west of the airport, off Runway 9L/27R, a total of nine (9) mobile homes are no longer in the 2005 65 DNL noise contour when compared to the 2004 65 DNL dB noise contour. For the area northwest of the airport, off Runway 13/31, a total of thirty-seven (37) homes (consisting of twenty-seven (27) mobile homes, two (2) multi-family homes with a total of nine (9) units, and eight (8) single-family homes) are no longer in the 2005 65 DNL dB noise contour when compared to the 2004 65 DNL dB noise contour.

Summary units difference 2004 and 2005	Multi family	Single family	Mobile home	Total units
65 DNL	−9	−8	−36	−53
70 DNL	0	0	0	0
75 DNL	0	0	0	0
65+	−9	−8	−36	−53

Summary population difference 2004 and 2005	Multi family	Single family	Mobile home	Total pop
65 DNL	−25	−19	−60	−104
70 DNL	0	0	0	0
75 DNL	0	0	0	0
65+	−25	−19	−60	−104

Issued in Washington, DC on October 24, 2006.

Steve Kelley,

Manager, Airspace and Procedures, Eastern Terminal Services, Federal Aviation Administration.

[FR Doc. 06–8975 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals, In September 2006, there were six applications approved. This notice also includes information on two applications, approved in August 2006, inadvertently left off the August 2006 notice. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Springfield Airport Authority, Springfield, Illinois.

Application Number: 06–10–C–00–SPI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $233,000.

Earliest Charge Effective Date: November 1, 2006.

Estimated Charge Expiration Date: July 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: On-demand air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Abraham Lincoln Capital Airport.

Brief Description of Projects Approved for Collection and Use:

Fire alarm upgrade terminal building.
Replace roof 1 terminal building (freight area).
Terminal study update.
Widen taxiways G and F and construct perimeter road.
Storm sewer rehabilitation study.
Storm sewer rehabilitation phase 1.
Replace perimeter fence, phases 1 and 2.

Decision Date: August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Chad Oliver, Chicago Airports District Office, (847) 294–7199.

Public Agency: City of Eugene, Oregon.

Application Number: 06–08–C–00–EUG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,645,000.

Earliest Charge Effective Date: March 1, 2007.

Estimated Charge Expiration Date: May 1, 2009.

Classes of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Taxiway Echo and A5 reconstruction.
Taxiway Alpha overlay (from A3 to A1).
Jet bridge replacement.
Snow removal equipment replacement vehicle.

Decision Date: August 29, 2006.

FOR FURTHER INFORMATION CONTACT: Wade Bryant, Seattle Airports District Office, (425) 227–2659.

Public Agency: City of Valdosta, Georgia.

Application Number: 06–08–C–00–VLD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $12,140.

Earliest Charge Effective Date: November 1, 2006.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Commercial ramp expansion (design).
Taxiway A rehabilitation (design).
Groove runway 17/35 extension (design).
Update airport master plan.

Decision Date: September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Parks Preston, Atlanta Airports District Office, (404) 305–7149.

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 06–12–C–00–BNA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $21,671,262.

Earliest Charge Effective Date: December 1, 2009.

Estimated Charge Expiration Date: June 1, 2011.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Nashville International Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 13/31 reconstruction.
Multi-user flight information display system upgrade.
Design of 2L/20R and 2R/20L runway safety areas.
Aircraft rescue and firefighting building expansion.
Ticketing level canopy extension.
Retaining wall on taxiways Juliet and Lima.
Hangar lane access improvements.
General aviation master plan.
Loading bridges (four).
Snow broom.
Master drainage plan/deicing runoff plan.
Lighting upgrade on runways 2L and 13/31.
Surface sweeper.
Exhibit A property map.
Airport rotating beacon.
Lightning protection for apron lights.

Decision Date: September 5, 2006.

FOR FURTHER INFORMATION CONTACT: Peggy Kelley, Memphis Airports District Office, (901) 322–8186.

Public Agency: Jacksonville Aviation Authority, Jacksonville, Florida.

Application Number: 06–09–C–00–JAX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $267,389,352.

Earliest Charge Effective Date: January 1, 2008.

Estimated Charge Expiration Date: December 1, 2023.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jacksonville International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Design and construction of concourses A and C.

Apron related to construction of new terminal building.

Apron, taxiway, and aircraft rescue and firefighting hardstand pavement rehabilitation.

Aircraft rescue and firefighting vechicle.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Aircraft Americans with Disabilities Act lift.

Airport master plan update.

Land acquisition.

PFC implementation and administrative costs.

Decision Date: September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 120.

Public Agency: City of Cody, Wyoming.

Application Number: 06–05–C–00–COD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $534,096.

Earliest Charge Effective Date: November 1, 2006.

Estimated Charge Expiration Date: March 1, 2010.

Class of Air Carriers Not Required to Collect PFC's: On-demand, non-scheduled air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Yellowstone Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Existing terminal renovation.

New terminal design, phase 1.

PFC consulting services.

Master plan.

New terminal design, phase 2.

New terminal construction, phase 1.

New terminal construction, phase 2.

New terminal construction, phase 3.

Decision Date: September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Long Beach, California.

Application Number: 06–03–C–00–LGB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $7,148,186.

Earliest Charge Effective Date: May 1, 2017.

Estimated Charge Expiration Date: December 1, 2018.

Class of Air Carriers Not Required to Collect PFC's. Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Long Beach/Daugherty Field.

Brief Description of Projects Approved for Collection and Use:

Airfield pavement and infrastructure.

Airfield fencing.

Aircraft rescue and firefighting vehicles.

Accessibility equipment.

Decision Date: September 13, 2006.

FOR FURTHER INFORMATION CONTACT: Ruben Cabalbag, Los Angeles Airports District Office, (310) 725–3630.

Public Agency: County of Kenton and Kenton County Airport Board, Covington, Kentucky.

Application Number: 06–10–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $30,821,000.

Earliest Charge Effective Date: March 1, 2013.

Estimated Charge Expiration Date: January 1, 2015.

Class of Air Carriers Not Required to Collect PFC's:

(1) Part 121 supplemental operators which operate at the airport without an operating agreement with the public agency and enplane less than 1,500 passengers per year; and

(2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal loop road rehabilitation.

Rehabilitation of runway 18L/36R, taxiways T and S, and airfield signage and marking improvements.

Storm-water treatment detention facility improvement—Elijah's Creek and Gunpowder Creek.

Replace identification badging workstations.

Brief Description of Project Partially Approved for Collection and Use:

Terminal 3 security expansion.

Determination: The proposed relocation of murals from the terminal to the new security building has been determined to be ineligible.

Decision Date: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Harris, Memphis Airports District Office, (901) 322–8182.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Originial estimated charge exp. date	Amended estimated charge exp. date
94–01–C–02–PIA					
Peoria, IL	09/08/06	$2,885,171	$2,368,712	07/01/01	07/01/01
*05–01–C–01–PIE					
St. Petersburg, FL	09/12/06	3,357,639	3,357,639	11/01/07	02/01/09

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Originial estimated charge exp. date	Amended estimated charge exp. date
02–04–C–02–TOL					
Toledo, OH	09/14/06	3,927,997	3,820,436	11/01/06	07/01/07
97–03–C–03–GEG					
Spokane, WA	09/15/06	35,859,822	38,175,419	05/01/05	05/01/05
04–04–C–01–GEG					
Spokane, WA	09/15/06	4,461,711	4,680,431	05/01/06	12/01/05
05–05–C–01–GEG					
Spokane, WA	09/15/06	9,577,800	13,827,800	10/01/09	12/01/07
05–06–C–01–SYR					
Syracuse, NY	09/18/06	6,119,197	6,719,197	02/0107	02/01/07
00–03–C–02–PVD					
Providence, RI	09/20/06	41,689,000	31,869,715	08/01/12	01/01/11
04–04–U–01–PVD					
Providence, RI	09/20/06	NA	NA	08/01/12	01/01/11

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For St. Petersburg, FL, this change is effective on November 1, 2006.

Issued in Washington, DC on October 19, 2006.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 06–8973 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waivers

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waivers.

SUMMARY: The following waivers will permit ticket vending machine manufacturers to install and count as domestic for purposes of the Buy America Act, 49 U.S.C. 5323(j), as implemented by the Federal Transit Administration at 49 CFR part 661, the Mars Electronics International (MEI) BNA57/542 Banknote Validator, the Asahi Seiko USA, Inc. (Asahi Seiko) Model SA–595 Compact Coin Dispensing Hopper, and the Nextek Corporation (Nextek) BV–6000 Currency Validator Tekpak. Each waiver is valid for a period of 2 years, or until such time as a domestic source for the product becomes available, whichever occurs first. This notice shall ensure that the public is aware of the waivers. FTA requests that the public notify it if a domestic source for any of the above-listed products becomes available.

FOR FURTHER INFORMATION CONTACT: Jayme L. Blakesley, Attorney-Advisor, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Room 9316, Washington, DC 20590–0001. E-mail: *jayme.blakesley@dot.gov.* Telephone: (202) 366–0304.

SUPPLEMENTARY INFORMATION: See waivers below.

Waiver: MEI BNA57/542 Banknote Validator

Date Issued: October 20, 2006. Alex Litchfield, Sales Director, Transit and Parking, Mars Electronics International (MEI), 1301 Wilson Dr., West Chester, PA 19390.

Re: Buy America Non-Availability Waiver for the MEI BNA57/542 Banknote Validator

Dear Mr. Litchfield:

This letter responds to your April 26, 2006, request for a Buy America non-availability waiver for the Sodeco BNA57/542 Banknote Validator (''BNA57/542''), which is manufactured in Switzerland for use in ticket vending machines.

The Buy America Act requires, with few exceptions, that all steel, iron and manufactured goods used in FTA-funded projects be produced in the United States. One such exception is that of non-availability—that in some instances steel, iron, and goods produced in the United States are not produced in the United States in sufficient and reasonably available quantities or are not of a satisfactory quality. Therefore, Congress authorized FTA to waive the above requirement and allow, based on non-availability, the use in an FTA-funded project of steel, iron or manufactured goods produced outside the United States.

FTA verified non-availability of the BNA57/542 by publishing the following notice on its public Web site—*http://www.fta.dot.gov*—and the Docket Management System Web site—*dms.dot.gov,* Docket No. FTA–2006–25883, and allowing 30 days for public comment:

> Mars Electronics International (''MEI'') has requested a component non-availability waiver for the Sodeco BNA57/542 Banknote Validator (''BNA57/542''), manufactured in Switzerland for use in ticket vending machines. The BNA 57/542 has the following features: 6, 13, 30 or 90 banknote types with 4-way insertion, 2 second transaction time between notes, new banknotes programmable through network, 15 banknotes escrow. A datasheet describing the BNA57/542 can be accessed on MEI's Web site at *http://www.meiglobal.com.* MEI asserts that the BNA57/542, or its functional equivalent, is not available from a U.S. source. If granted, this waiver would permit ticket vending machine manufacturers to install the BNA57/542 and count it as domestic for purposes of Buy America compliance.
>
> Please note ''MEI BNA57/542'' in the subject line and submit comments by close of business October 20, 2006, to *jayme.blakesley@dot.gov.* For more information on Buy America, please see 49 CFR 661.7(d) and 661.9(d).

Thirty days have passed since publication of the above notice, and no party has indicated that a U.S. manufacturer produces banknote validators in sufficient and reasonably available quantities and of a satisfactory quality. Therefore, FTA hereby grants MEI a non-availability waiver for the BNA57/542 for a period of 2 years, or until such time as a domestic source for this type of unit becomes available, whichever occurs first. This waiver will permit ticket vending machine manufacturers to install the SA–595 and

count it as domestic for purposes of Buy America compliance.

If you have any questions, please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov.*

Sincerely, David B. Horner, Chief Counsel, Federal Transit Administration.

Waiver: Asahi Seiko Model SA–595 Compact Coin Dispensing Hopper

Date Issued: October 20, 2006. Steve Poulos, General Manager, Asahi Seiko USA, Inc., 6644 Paradise Road, Las Vegas, NV 89119.

Re: Buy America Non-Availability Waiver for Model SA–595 Compact Coin Dispensing Hopper.

Dear Mr. Poulos:

This letter responds to your August 14, 2006, request for an extension of a Buy America non-availability waiver for the Asahi Seiko Model SA–595 Compact Coin Dispensing Hopper (''SA–595''), which is manufactured in Japan for use in ticket vending machines. For the reasons below, I have determined that a non-availability waiver is appropriate here.

The Buy America Act requires, with few exceptions, that all steel, iron and manufactured goods used in FTA-funded projects be produced in the United States. One such exception is that of non-availability—that in some instances steel, iron, and goods produced in the United States are not produced in the United States in sufficient and reasonably available quantities or are not of a satisfactory quality. Therefore, Congress authorized FTA to waive the above requirement and allow, based on non-availability, the use in an FTA-funded project of steel, iron or manufactured goods produced outside the United States.

FTA verified non-availability of the SA–595 by publishing the following notice on its Web site—*http://www.fta.dot.gov*—and the Docket Management System Web site—*http://dms.dot.gov,* Docket No. FTA–2006–25860, and allowing 30 days for public comment:

Asahi Seiko USA, Inc. (''Asahi Seiko'') has requested an extension of its component waiver for its Model SA 595 Compact Coin Dispensing Hopper (''SA–595''), manufactured for use in ticket vending machines. The unit is a low profile, bulk coin dispensing hopper module, a device able to hold a quantity of coins in a hopper and dispense them for change in a secure and accurate manner upon electronic command. Asahi Seiko asserts that the SA–595, or its functional equivalent, is not available from a U.S. source. If granted, an extension of this waiver would permit ticket vending machine manufacturers to install the SA–595 and count it as domestic for purposes of Buy America compliance.

Please note ''Asahi'' in the subject line and submit comments by close of business October 13, 2006, to *jayme.blakesley@dot.gov.* For more information on Buy America, please see 49 CFR 661.7(d) and 661.9(d).

Thirty days have passed since publication of the above notice, and no party has indicated that a U.S. manufacturer produces coin dispensing hoppers in sufficient and reasonably available quantities and of a satisfactory quality. Therefore, FTA hereby extends Asahi Seiko's non-availability waiver for the SA–595 for a period of 2 years, or until such time as a domestic source for this type of unit becomes available, whichever occurs first. This waiver will permit ticket vending machine manufacturers to install the SA–595 and count it as domestic for purposes of Buy America compliance.

If you have any questions, please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov.*

Sincerely, David B. Horner, Chief Counsel, Federal Transit Administration.

Waiver: Nextek BV–6000 Currency Validator Tekpak

Date Issued: October 20, 2006. Norman Diamond, President, Nextek Corporation, 3300 Commercial Avenue, Northbrook, IL 60062.

Re: Buy America Non-Availability Waiver for the BV–6000 Currency Validator Tekpak.

Dear Mr. Diamond:

This letter responds to your June 19, 2006, request for a Buy America non-availability waiver for the BV–6000 Currency Validator Tekpak (''BV–6000''), which is manufactured in Japan for use in ticket vending machines. For the reasons below, I have determined that a non-availability waiver is appropriate here.

The Buy America Act requires, with few exceptions, that all steel, iron and manufactured goods used in FTA-funded projects be produced in the United States. One such exception is that of non-availability—that in some instances steel, iron, and goods produced in the United States are not produced in the United States in sufficient and reasonably available quantities or are not of a satisfactory quality. Therefore, Congress authorized FTA to waive the above requirement and allow, based on non-availability, the use in an FTA-funded project of steel, iron or manufactured goods produced outside the United States.

FTA verified non-availability of the BV–6000 by publishing the following notice on its public Web site—*http://www.fta.dot.gov*—and the Docket Management System Web site—*http://dms.dot.gov,* Docket No. FTA–2006–25861, and allowing 30 days for public comment:

Nextek Corporation (''Nextek'') has requested a component non-availability waiver for its model BV–6000 Currency Validator Tekpak (''BV–6000''), manufactured for use in ticket vending machines, automatic fare collection and automatic teller machines. It has the following features: accepts any currency, any four-way orientation bill insertion, 15 bill escrow, 1,000 bill cashbox, optical/magnetic bill recognition, high acceptance rate with security, less than 2 seconds for bill processing, one-way bill transport system, internal transaction memory for auditing and testing, easy access without any tools, and the ability to free jammed bills and clean bill guideways easily. Nextek asserts that the BV–6000, or its functional equivalent, is not available from a U.S. source. If granted, this waiver would permit ticket vending machine manufacturers to install the BV–6000 and count it as domestic for purposes of Buy America compliance.

Please note ''Nextek'' in the subject line and submit comments by close of business October 13, 2006, to *jayme.blakesley@dot.gov.* For more information on Buy America, please see 49 CFR 661.7(d) and 661.9(d).

Thirty days have passed since publication of the above notice, and no party has indicated that a U.S. manufacturer produces currency validator tekpaks in sufficient and reasonably available quantities and of a satisfactory quality. Therefore, FTA hereby grants Nextek's non-availability waiver for the BV–6000 for a period of two years, or until such time as a domestic source for this type of unit becomes available, whichever occurs first. This waiver will permit ticket vending machine manufacturers to install the BV–6000 and count it as domestic for purposes of Buy America compliance.

If you have any questions, please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov.*

Sincerely, David B. Horner, Chief Counsel, Federal Transit Administration.

Issued: October 20, 2006.

David B. Horner,

Chief Counsel.

[FR Doc. E6–18260 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24037]

Clarification for Fiscal Year (FY) 2007 Implementation for the Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute (JARC), and New Freedom Programs

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Interim guidance for FY 2007 implementation.

SUMMARY: The Federal Transit Administration (FTA) published a **Federal Register** notice on September 6, 2006 (71FR52610) announcing proposed guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities (Section 5310), JARC, and New Freedom programs. By this notice, FTA clarifies interim guidance for FY 2007 included in the notice published on September 6, 2006, and provides additional interim guidance for FY 2007.

DATES: This clarification is effective on October 31, 2006.

ADDRESSES: FTA continues to invite public comment on the proposed circulars for these programs through November 6, 2006 via the Web site: *http://dms.dot.gov* (Docket Number FTA–2006–24037); fax at 202–493–2251; or mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan-Smith, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9114, Washington, DC 20590, phone: (202) 366–4020, fax: (202) 366–7951, or e-mail, *Henrika.Buchanan-Smith@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA published a **Federal Register** notice and proposed program guidance circulars on September 6, 2006 for the Elderly Individuals and Individuals with Disabilities (Section 5310), JARC, and New Freedom programs. In the notice, FTA included ''Guidance for the Coordinated Planning Process for FY 2007,'' phasing in the requirements for the locally developed coordinated public transit–human service transportation plan.

This notice clarifies that applicants should follow this interim guidance regarding the planning process for all grants awarded under these three programs in FY 2007, including funds appropriated and apportioned in both FY 2006 and FY 2007.

An earlier **Federal Register** notice published March 15, 2006, included ''Interim Guidance for the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom Grants for FY 2006.'' At the time FTA published that Interim Guidance, we expected to issue final guidance before FY 2007, and the interim guidance was only made applicable to FY 2006 grants. The interim guidance for FY 2007 in the September 6, 2006 notice, however, applied only to the coordinated plan, not to other topics addressed in the FY 2006 interim guidance. The three proposed circulars include guidance for other areas such as designated recipient, competitive selection, project eligibility, and subrecipient eligibility. The proposed requirements in these circulars are based on provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) as well as issues raised and commented on during the public comment period. The proposed circulars reflect FTA's current interpretation of SAFETEA–LU.

The guidance contained in the proposed circulars should be used for applications submitted during FY 2007, to the extent possible. However, FTA recognizes that some designated recipients may have proceeded in good faith based on the interim guidance for FY 2006 in the March 15, 2006, notice, which stated that in the event FTA subsequently established more specific criteria for the coordinated planning or competitive selection process, or for project eligibility, the requirements would not be applied retroactively to grants awarded prior to the issuance of the guidance.

FTA will continue to apply this ''hold harmless'' principle to applications submitted in FY 2007 based on coordinated planning or competitive selection processes substantially complete before the issuance of final guidance. Designated recipients should be aware that projects awarded funding prior to the issuance of final guidance may not be eligible for continuation funding in future years if they do not meet the eligibility criteria in the final guidance. When FTA subsequently issues final guidance it will be effective in FY 2008.

Issued in Washington, DC, this 23rd day of October, 2006.

James S. Simpson,

Administrator.

[FR Doc. E6–18259 Filed 10–30–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities

AGENCY: Office of Terrorism and Financial Crime, Treasury.

ACTION: Notice of updated guidelines.

SUMMARY: The U.S. Department of Treasury (''Treasury'') is publishing an updated version of its Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (''Guidelines'') along with a new Annex. The Guidelines were originally released in November 2002. A revised version of the Guidelines was published for public comment on December 5, 2005. Treasury received nine (9) comments on the revised Guidelines and, as explained below, made a number of additional revisions in response to those comments.

DATES: *Effective Date:* The updated Guidelines were published on Treasury's Web site on September 29, 2006.

FOR FURTHER INFORMATION CONTACT: Office of Terrorist Financing and Financial Crime, Department of the Treasury, Washington, DC 20220: (202) 622–3786 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The Guidelines, the Response to Comments Submitted on the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (''Response''), and additional information concerning the protection of charities are available on the Treasury's Web site at *http://www.treas.gov/gov/offices/enforcement/key-issues/protecting/*.

The Response and Guidelines are reprinted below.

Dated: October 16, 2006.

Patrick M. O'Brien,

Assistant Secretary of the Treasury.

Response to Comments Submitted on the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities

In response to the threat of terrorist financing in the charitable sector and to assist charities in protecting themselves from such abuse, Treasury initially

released its *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* (Guidelines) in November 2002. After receiving numerous comments from the sector regarding these Guidelines, Treasury hosted an Initial Outreach Event in April 2004, at which time Secretary Snow committed that Treasury would continue to work with the sector to amend and revise the Guidelines to improve their utility for the sector in protecting against terrorist abuse. On December 5, 2005, after extensive discussions with other government authorities and the charitable sector, Treasury released a draft revised version of the Guidelines and invited public comment on the revisions.

Treasury received a total of nine submissions during the comment period from a wide range of organizations. A number of organizations prefaced their comments with a general recommendation that Treasury withdraw the Guidelines based on their perception that the Guidelines are potentially harmful to the charitable sector given existing regulations governing the operations of charities. We do not believe that the voluntary adoption of the Guidelines—whereby charities with a higher risk of vulnerability to terrorist financing should consider adopting the best practices to better defend against that risk—would adversely affect the financial health, or obstruct the day-to-day operations, of the charitable sector.

Treasury is uniquely positioned to provide recommended measures to the charitable sector that are particularly relevant for combating the ongoing and pervasive terrorist abuse and exploitation of charities. Such voluntary measures are intended to assist charities build upon pre-existing controls and protective measures by adopting and applying appropriate counter-terrorist financing safeguards. Treasury also believes the sector is better served through ongoing dialogue regarding the evolving nature of the terrorist threat, particularly with respect to the charitable sector, and effective voluntary protective measures that the sector can adopt to combat this threat.

Treasury initially conceived the Guidelines as a direct response to requests from the sector for policies and practices to protect against potential terrorist abuse and assist in compliance with new terrorist financing authorities, including Executive Order 13224. The Guidelines not only provide such measures in the form of voluntary ''best practices,'' but their release initiated a strong and ongoing dialogue with the charitable sector. This dialogue has led to a greater awareness of the risks of terrorist abuse in the charitable sector, and as a result, charities have adopted more proactive approaches to protect their assets and the integrity of their operations. Treasury's engagement with the sector has also resulted in the evolution of the Guidelines into a more effective, relevant, and applicable resource for the sector. In addition, we encourage charities to consult other available publications or materials on good governance and sound charitable practices. We hope that the adoption of the policies and procedures contained in the Guidelines serve to strengthen donor confidence and contribute to the charitable sector's continued vitality.

For the above reasons, Treasury has not withdrawn the Guidelines. Instead, after careful consideration of all comments and recommendations, Treasury has further amended the Guidelines to enhance their usefulness for the charitable sector in adopting practices that better protect it from the risks of terrorist abuse. The purpose of this document is to summarize the content of the comments received and describe our response, including any changes to the Guidelines and the reasoning supporting those changes. The summary of the comment submissions has been organized according to the layout of the Guidelines.

1. Title

Comments: Many commenters indicated that part of the title of the Guidelines, *''Voluntary Best Practices,''* is a misrepresentation for two reasons. First, the commenters stressed that it is inaccurate to suggest that the Guidelines are a compilation of the charitable sector's best practices. Due to the diversity within the charitable sector, there is not a commonly agreed upon set of best practices that applies to all charities. Second, many commenters expressed the belief that the Guidelines are not voluntary. Their concern is based primarily upon the recent incorporation of the Guidelines into the memorandum accompanying the regulations for the 2006 Combined Federal Campaign (CFC), issued by the Office of Personnel Management (OPM). Moreover, concern exists that other federal agencies will adopt the recommendations included in the Guidelines as requirements, thus conferring upon the Guidelines de facto legal authority. A few commenters suggested that Treasury should change the title of the Guidelines to *''Suggestions for Complying with Anti-Terrorist Financing Laws.''*

Treasury Response: Although we acknowledge the concerns of the commenters, the title of the Guidelines remains unchanged, because it does not misrepresent the purpose and intent of the Guidelines. We believe the Guidelines represent sound best practices that help to prevent terrorist abuse of charitable organizations, and were, in fact, conceived after reviewing a wide spectrum of existing due diligence best practices employed by the sector. To address the concerns of the commenters, we have revised the Introduction to the Guidelines to state more clearly that these best practices are neither exhaustive nor comprehensive. Rather, the Guidelines represent one set of best practices specifically aimed at combating terrorist financing. Other best practices may exist that would be more suitable for combating other abuses that charities may face, but which may also be relevant or helpful in protecting charities from terrorist abuse. Nonetheless, the Guidelines contain many best practices that will help charities in adopting an appropriate risk-based approach to protect their assets and operations from terrorist financing abuse and facilitate their compliance with existing U.S. legal obligations, including the Office of Foreign Assets Control (OFAC) administered sanctions programs.

Similarly, we disagree that the Guidelines may become de facto legal requirements. We have been clear both in the Introduction to the Guidelines, as well in our public discourse regarding the Guidelines, that they are voluntary and do not create, modify, or supersede any existing U.S. legal requirements. In addition to the title, their voluntary nature is reiterated throughout the text of the Guidelines. We have also amended Footnote 1 (formerly Footnote 3) to make clear that non-adherence to the Guidelines does not, in and of itself, constitute a violation of existing U.S. law. Moreover, the incorporation of the Guidelines into the CFC commentary does not indicate the evolution of the Guidelines from a voluntary undertaking to a legal requirement, but, in fact, speaks to their usefulness as practical advice to protect charities from abuse. The incorporation of the Guidelines by other federal agencies encourages consistency across the U.S. Government and signals the acceptance of the central tenet of the Guidelines—charities should apply a risk-based approach in adopting appropriate measures to protect themselves against the threat of terrorist abuse. For these reasons, we have not changed the title to the Guidelines.

2. Introduction

Comments: Many commenters expressed concern that the introductory paragraphs broadly overstate the extent of diversion of charitable assets to terrorist organizations and their support networks. In particular, several comments singled out the following sentence: ''Investigations have revealed terrorist abuse of charitable organizations, both in the United States and worldwide, often through the diversion of donations intended for humanitarian purposes but funneled instead to terrorists, their support networks, and their operations.'' The commenters recommended that Treasury include data and other information to support these statements.

Treasury Response: We have taken this comment under advisement and have revised the sentence quoted above by including an Annex that describes and references the various indicators of terrorist financing in the charitable sector. There exists a large library of open source information describing the use of charities by terrorists and their supporters that is available to the public. Terrorist financing risk in the sector is evidenced by: (i) open source media reports; (ii) designations of charities; (iii) results of investigations and prosecutions of charities and individuals associated with charities; and (iv) international actions. The Annex also notes that much of the information evidencing the terrorist financing risk in the charitable sector is available on Treasury's Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.*

3. Fundamental Principles

Comments: Several commenters noted that the Guidelines do not include two principles from *Principles of International Charity*, which was developed by the Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors and released in March 2005. The first principle asserts that charitable organizations are non-governmental entities and are not agents for enforcement of U.S. or foreign laws or their policies. The second principle states that each charity ''must safeguard its relationship with the communities it serves in order to deliver effective programs. This relationship is founded on local understanding and acceptance of the independence of the charitable organization.''

Treasury Response: We agree with both of these principles. Therefore, we have revised the first principle in Fundamental Principles to state: ''Charities are independent entities and are not part of the U.S. Government. Like all U.S. persons, charitable organizations must comply with the laws of the United States, which include, but are not limited to, all OFAC administered sanctions programs.'' With this revision, we recognize the necessity of independence for charities to perform their work effectively. We also acknowledge that charities, by virtue of their separation from the government, are not agents for the enforcement of U.S. or foreign laws or their respective policies. Moreover, we do not believe that charities become agents of the government by virtue of their obligation to abide by U.S. law, or by applying any of the best practices within the Guidelines. Based on this revision, we do not think it is necessary to revise the Fundamental Principles further to include the second principle, because our revision captures the meaning, and is consistent with, the second principle. The recognition of the independence of charities ensures that the foundation forming a charity's relationship with the community it serves will not be shaken.

4. Governance, Financial Practice, and Disclosure/Transparency

Comments: This section will group together comments falling under the sections for Governance, Financial Practice, and Disclosure/Transparency in Governance and Finances, due to the interrelated nature of those comments. Several commenters suggested combining the Financial Practice section with the Disclosure/Transparency section into one section, entitled ''Accountability.'' The commenters felt that such a section, dealing only with financial practices, would be more applicable to Treasury's expertise.

In the event that Treasury should choose to keep the practices pertaining to governance in the Guidelines, the commenters recommended the following specific changes:

- *Section III.B:* A few commenters noted the need for an appropriate exception to the suggestion that the governing board of a charity consist of at least three members. They explained that this provision does not take into account certain trusts, religious organizations, and corporation soles, which may not be able to have more than one member on the board.
- *Section III.B.4:* Many commenters expressed concern with the provision recommending that governing board records be immediately turned over to appropriate law enforcement authorities, stating that such a provision goes beyond federal and state disclosure laws and constitutional protections.
- *Section V.B:* Two commenters noted that the definition of ''key employees'' expands on the definition contained in Form 990 from the Internal Revenue Service (IRS), and it could be interpreted to include people who exert influence over charitable activities, but who are not directly related to the charitable projects.
- *Section V.A.3:* One commenter remarked on the lack of a definition for subsidiaries or affiliates and cited the need for clarification.
- *Section IV.C:* One commenter stated that the provision in the Guidelines recommending independent audits for charitable organizations if the charity's annual gross income exceeds $250,000 is inconsistent with the auditing standards issued by OMB Circular A–133.

Treasury Response: Based on the comments received, we extensively reorganized these three sections to clarify the objectives of each section:

- We changed the original section, ''Governance,'' to ''Governance Accountability and Transparency.'' Within this section, we incorporated all provisions relating to governance from the original ''Disclosure/Transparency'' section.
- We renamed the original ''Financial Practice/Accountability'' section to ''Financial Accountability and Transparency'' and incorporated all provisions relating to financial practice from the original ''Disclosure/Transparency'' section.
- We revised the original ''Disclosure/Transparency'' section and renamed it ''Programmatic Verification,'' which conveys the purpose of its remaining provisions more clearly, and aligns more closely with existing international best practices for non-profit organizations. It also incorporates the provisions on how charities should best review the programmatic operations of their grantees, which were originally located in the final section on anti-terrorist financing best practices.

We also considered the specific comments received on these three sections and made the following revisions (the section numbers correspond with the current sections in the Guidelines).

- *Section III.B:* We deleted the provision calling for a minimum of three members on the governing board of a charity. We agreed with the commenters that this provision did not adequately take into account the existence of certain types of organizations that would not be able to

meet this recommendation. Thus, we revised the section that originally discussed best practices for a charity's board of directors, renaming it, ''Independent Oversight.'' Within this section, we added a preamble conveying the importance of both independent oversight of charitable organizations and flexibility for an organization to choose the oversight structure that best fits its needs. We have also included the acknowledgement that independent oversight may be unfeasible for certain charitable organizations, such as houses of worship and corporation soles. The remaining provisions within this oversight section merely highlight certain basic principles that are hallmarks of good governance: (i) Independence of the governing board; (ii) development of conflict of interest policies and procedures; (iii) accountability of the governing board; and (iv) recordkeeping.

• *Section III.B.2:* We agreed with one commenter's concern about the confusion caused by a governance provision calling for the board to adopt, implement, and oversee practices consistent with the principles contained in the Guidelines. We understand that some may interpret the provision to mean that the best practices provided in the Guidelines are either mandatory or represent a comprehensive list of best practices to protect against terrorist financing in the charitable sector. As stated earlier, the Guidelines do not purport to be an exhaustive compilation of best practices, and are voluntary. Therefore, we have changed this provision to clarify that members of a charity's governing board are responsible for the oversight of practices that will effectively safeguard charitable assets.

• *Section III.B.6:* We have added a footnote (Footnote 6) defining subsidiaries and affiliates, as the terms are used in the Guidelines. The definition is similar to the one used by Form 990: ''Subsidiaries or affiliates are organizations that are subject to the general supervision or control of a parent or central organization.''

• *Section III.B.7:* In response to some commenters' concern with the provision governing the disclosure of records, we revised the provision to state the following: ''When served with process or when other appropriate authorization exists, charities should produce requested records maintained in accordance with these Guidelines to the appropriate regulatory/supervisory and law enforcement authorities in a timely fashion.''

• *Section III.C:* We agreed with the commenters who noted the difference between the definition of key employees in the Guidelines and the definition used by the IRS. We amended the definition of key employees to mirror the definition used by the IRS in Form 990.

• *Section IV.C:* We disagree that the Guidelines are inconsistent with the audit standards set forth by OMB Circular A–133. First, OMB Circular A–133 only applies to audits performed on expenditures of federal grants or awards. While many charities may receive federal grants, the Guidelines are intended to provide best practices that charities may apply regardless of whether they receive federal funds or private donations. Second, while Circular A–133 sets standards among Federal and State governments regarding the audits of non-profit organizations expending federal awards, it does not preclude charities from having additional independent audits performed if they wish. Third, as stated in the eighth footnote of the Guidelines, the $250,000 threshold figure is drawn from the June 2005 final report to Congress of the Panel on the Nonprofit Sector, convened by Independent Sector, and is thereby consistent with industry's suggested threshold. Finally, the Guidelines are not obligatory, but voluntary steps that charities may choose to take as additional protective measures. Thus, the provision on financial audits remains unchanged in the Guidelines.

5. Anti-Terrorist Financing Best Practices

Comments: The majority of the comment submissions expressed concerns with various provisions in this section. The following summarizes the specific comments:

• *Section VI:* One commenter noted the difficulty of assessing risk pursuant to the Guidelines' risk-based approach without any corresponding advice.

• *Sections VI.A and B:* Several comments focused on the amount of information-collection provisions, regarding them as onerous, unrealistic, and having limited value in protecting against terrorist financing.

• *Sections VI.B.1 and 4:* Many commenters objected to the inclusion of the publicly available information, including the Internet, as a means to vet grantees or employees. They argued that Internet searches would yield widely varying and unverified information about certain organizations or individuals.

• *Section VI.B.3:* A few commenters objected to the incorporation of other government lists of designated parties created pursuant to UNSCR 1373. They claimed that Treasury is inadvertently legitimizing these other lists by citing to them.

• *Section VI.B.5:* A few comments focused on the provision suggesting that charities request certifications from grantees with whom they contract or work. They suggested deleting the provision or at least revising the certification to adopt the approach of the 2006 CFC. This approach would involve a grantee certifying its compliance with U.S. law, as opposed to certifying that it has checked certain lists.

• *Section VI.D:* Some commenters recommended deleting the voluntary reporting provision in its entirety, arguing that it creates the impression that charitable organizations are agents of the U.S. Government.

• One commenter suggested the Guidelines should explicitly state that it is permissible for a charity to engage in normally prohibited transactions with a group, entity, or individual on the Specially Designated Nationals and Blocked Persons List (SDN List) if OFAC issues a license to charities for such transactions.

Treasury Response: We have made the following revisions to the anti-terrorist financing best practices section based on the comments (the section numbers correspond with the current sections in the Guidelines):

• *Section VI:* In response to the comment requesting further assistance in assessing the risk of terrorist abuse or exploitation, Treasury continues to produce information and engage in outreach to assist charities in understanding the nature of ongoing terrorist abuse. Such materials and outreach are available on or through the Treasury Web site and are further described or referenced in the Annex to the Guidelines.

• *Sections VI.A and B:* We disagree with the comment that the information-collection procedures are burdensome and of little utility. We recognize that the information-collection practices are expansive and are purposefully designed so that a charity can gather as much information as possible to ensure the greatest transparency and accountability over charitable operations. This type of information-gathering is essential for the charity to know its grantees and to be assured that its assets will not be diverted to terrorist organizations or their support networks. Moreover, the general risk-based approach governing the Guidelines affords charities the opportunity to tailor the scope of these information-collection procedures to the terrorist financing risk they face. A charity

should perform its own terrorist financing risk assessment based on its particular operations and projects. Depending on its particular risk profile, a charity should then choose appropriate protective measures that will adequately safeguard its assets from terrorist financing abuse and ensure their delivery to legitimate beneficiaries. As stated above, the best practices of the Guidelines are not a comprehensive or exhaustive listing of all best practices. Charities are free to apply other measures that they believe will protect their assets from diversion.

In order to lessen any perceived administrative burden on charities, we have amended the Guidelines by replacing the word ''recipient'' with ''grantee'' throughout the document and defining ''grantee''. This revision is intended to clarify the information-collection recommendations by explaining what charities should do for immediate grantees versus downstream grantees. ''Grantee'' is defined as an immediate grantee of charitable resources or services. To the extent reasonably practicable, charitable organizations should also apply or ensure the existence of applicable safeguards in any downstream sub-grantees or recipients to protect charitable resources from diversion. Finally, we caution charities against entering into a relationship with a grantee where any doubts exist about the grantee's ability to ensure safe delivery of charitable resources.

• *Sections VI.B.1 and 5:* We agree with commenters that the Internet often provides information that may be false or unverified. For this reason, we have removed the clause suggesting that charities look to the Internet for further information about potential grantees or employees. However, the Guidelines still encourage charities to employ all reasonably available means, including publicly available information, to determine the level of risk accompanying a particular charitable operation or when engaging in appropriate vetting procedures. List-checking alone does not guarantee the safe delivery of charitable assets to intended beneficiaries. Properly using publicly available resources, such as open source media reports or other federal agency lists and information, can provide a charity with adequate and comprehensive information from which to make informed decisions about the kinds of protective measures it should take.

• *Section VI.B.4:* We do not agree with commenters that Treasury is legitimizing the UNSCR 1373 lists adopted by other governments by merely providing information that such lists exist. The purpose of including information on UNSCR 1373 lists in the Guidelines is not to endorse such lists, but to provide charities with an understanding of the varying laws under which they may operate in other jurisdictions. However, in response to the objections raised in some comments and to clarify the purpose of the information, we have added the following sentence to Footnote 14: ''The Guidelines do not legitimize or endorse the UNSCR 1373 lists adopted by foreign jurisdictions.''

• *Section VI.B.6:* We agree with the importance of carrying a consistent message throughout the U.S. Government. For that reason, we have accepted the suggestion of one commenter to align the certification more closely with the one adopted in the 2006 CFC. The new provision also delineates different certifications for U.S. and foreign grantees. Instead of having grantees certify that they checked the SDN List, the new certification suggests that U.S. grantees certify that they are in compliance with all laws restricting U.S. persons from dealing with parties subject to OFAC sanctions. With regard to foreign grantees, they should certify that they do not deal with parties subject to OFAC sanctions or anyone else known to support terrorism.

• *Section VI.D:* We disagree with the notion that the voluntary reporting provision creates the impression that charities are agents of the U.S. Government. As with all parts of the Guidelines, this provision is voluntary and charities are not under any obligation to report any information. This provision is also consistent with U.S. guidance to other sectors regarding terrorist financing or other illicit finance risks. In addition, we have clearly acknowledged in the Fundamental Principles of the Guidelines that charitable organizations are independent entities and are not a part of the U.S. Government. The voluntary reporting measure explains what steps a charity may proactively take to assist in protecting itself from abuse by terrorists and their support networks. Since charities occasionally have direct access to evidence of terrorist activities in the course of their operations, voluntarily reporting such evidence provides the appropriate authorities with the opportunity to conduct further investigations, and helps reduce the threat that terrorist financing poses to the charitable sector. Thus, the provision is an important component of anti-terrorist financing best practices, and it remains in the Guidelines with only minor changes.

• While the comment regarding OFAC's licensing authority is accurate, we believe that the Guidelines make sufficient reference to this authority in Footnote 2 (formerly Footnote 8), which states: ''OFAC can issue licenses to U.S. persons to engage in transactions that would otherwise be prohibited, if there is a policy-permissible reason to do so, and if permitted by statute.'' In addition, the footnote refers to further information, available on OFAC's Web site, regarding licensing procedures for non-profit organizations wishing to undertake humanitarian activities in sanctioned countries. To provide more information on licensing, we have added the link to OFAC's Web site, which has information about the types of available licenses and the process for requesting a license.

Conclusion

As the Annex to the Guidelines illustrates, the risk of terrorist abuse of the charitable sector is both ongoing and significant. Recognition of this reality is the first step in finding ways to protect both donors and charities.

Treasury is sensitive to the concerns raised by the charitable sector and appreciates the insightful comments submitted. The release of these revised Guidelines reflects a further positive development in the ongoing dialogue between the charitable sector and Treasury. Treasury believes that the Guidelines offer a framework of voluntary best practices that is attuned to the unique challenges and risks facing charities. These best practices provide the necessary framework to safeguard against terrorist abuse of the charitable sector by offering protective measures to help ensure that the vital services provided by charities are not exploited by terrorists or their organizations.

Treasury remains deeply committed to working with the charitable community on future initiatives to combat terrorist abuses. While Treasury believes that the Guidelines represent a positive step in combating terrorist abuse of the charitable sector, the Guidelines also underscore the need for continued public outreach as a critical element of our comprehensive approach to combating terrorist abuse of the charitable sector.

U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities [1]

Table of Contents

I. Introduction
II. Fundamental Principles of Good Charitable Practice
III. Governance Accountability and Transparency
IV. Financial Accountability and Transparency
V. Programmatic Verification
VI. Anti-Terrorist Financing Best Practices

I. Introduction

Upon issuance of Executive Order 13224, President George W. Bush directed the U.S. Department of the Treasury (''Treasury'') to work with other elements of the federal government and the international community to develop a comprehensive and sustained campaign against the sources and conduits of terrorist financing. Investigations have revealed terrorist abuse of charitable organizations, both in the United States and worldwide, to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise cultivate support for terrorist organizations and operations. This abuse threatens to undermine donor confidence and jeopardizes the integrity of the charitable sector, whose services are indispensable to both national and world communities.

In response to this threat, Treasury first released the Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (''Guidelines'') in November 2002. In December 2005, based on extensive review and comment by public and private sector interested parties, Treasury revised and released the Guidelines in draft form for further public comment. Based on the comments received, Treasury has further amended the Guidelines to improve their utility to the charitable sector in adopting practices that can better protect it from terrorists and their support networks.

The Guidelines are designed to enhance awareness in the donor and charitable communities of the kinds of practices that charities may adopt to reduce the risk of terrorist financing or abuse. These Guidelines are voluntary and do not create, supersede, or modify current or future legal requirements applicable to U.S. persons, including U.S. non-profit institutions. Adherence to these guidelines does not constitute a legal defense against any civil or criminal liability for violating any local, state, or federal law or regulations. In addition, these Guidelines do not represent an exhaustive or comprehensive compilation of best practices. Many charities, through their extensive experience and expertise in delivering international aid, have already developed effective internal controls and practices that lessen the risk of terrorist financing or abuse. In view of this fact, Treasury does not want charities to abandon proven internal controls and practices. Rather, the Guidelines are intended to assist charities in developing, re-evaluating, or strengthening a risk-based approach to guard against the threat of diversion of charitable funds or exploitation of charitable activity by terrorist organizations and their support networks.

In addition, these Guidelines are intended to assist charities in understanding and facilitating compliance with preexisting U.S. legal requirements related to combating terrorist financing, which include, but are not limited to, various sanctions programs administered by the Office of Foreign Assets Control (''OFAC''). These preexisting legal requirements are clearly marked in the text of the Guidelines.

The risk-based nature of these Guidelines reflects Treasury's recognition that a ''one-size-fits-all'' approach is untenable and inappropriate due to the diversity of the charitable sector and its operations. Accordingly, certain aspects of the Guidelines will not be applicable to every charity, charitable activity, or circumstance. Moreover, Treasury acknowledges that certain exigent circumstances (such as catastrophic disasters) may make application of the Guidelines difficult. In such cases, charities should maintain a risk-based approach that includes all prudent and reasonable measures that are feasible under the circumstances. Charities and donors are encouraged to consult these Guidelines when considering protective measures to prevent infiltration, exploitation, or abuse by terrorists. Although adherence to these Guidelines does not guarantee protection from terrorist abuse, effective internal controls which incorporate the principles and practices set forth in these Guidelines can prevent the diversion of charitable resources from their proper uses, as well as identify situations involving terrorist financing or abuse.

Treasury recognizes the vital importance of the charitable community in providing essential services around the world. Treasury also understands the difficulty of providing assistance to those in need, often in remote and inaccessible regions, and applauds the efforts of the charitable community to meet such needs. The goal of these Guidelines is to facilitate legitimate charitable efforts and protect the integrity of the charitable sector and good faith donors by offering the sector ways to prevent terrorist organizations from exploiting charitable activities for their own benefit.

II. Fundamental Principles of Good Charitable Practice

A. Charities are independent entities and are not part of the U.S. Government. Like all U.S. persons, charitable organizations must comply with the laws of the United States, which include, but are not limited to, all OFAC-administered sanctions programs.[2]

[1] This document is a revised version of the original Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities released by the U.S. Department of the Treasury in November 2002. This revised version incorporates comments received in response to the issuance of the draft revised Guidelines released for public comment in December 2005.

These Guidelines are designed to assist charities that attempt in good faith to protect themselves from terrorist abuse and are not intended to address the problem of organizations that use the cover of charitable work, whether real or perceived, to provide support to terrorist groups or fronts operating on behalf of terrorist groups. Non-adherence to these Guidelines, in and of itself, does not constitute a violation of existing U.S. law. Conversely, adherence to these Guidelines does not excuse any person (individual or entity) from compliance with any local, state, or federal law or regulation, nor does it release any person from or constitute a legal defense against any civil or criminal liability for violating any such law or regulation. In particular, adherence to these Guidelines shall not be construed to preclude any criminal charge, civil fine, or other action by Treasury or the Department of Justice against persons who engage in prohibited transactions with persons designated pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, as amended, or with those that are designated under the criteria defining prohibited persons in the relevant Executive orders issued pursuant to statute, such as the International Emergency Economic Powers Act, as amended. Please see Footnote 12 for an explanation of the master list of Specially Designated Nationals (the ''SDN List''), which includes all such designated persons. These Guidelines are also separate and apart from requirements that apply to charitable organizations under the Internal Revenue Code (''IRC'').

[2] OFAC sanctions programs include those relating to particular countries or regimes (country-based programs), as well as those relating to groups, individuals, or entities engaged in specific activities (list-based programs). Sanctions programs normally: (i) prohibit U.S. persons from engaging in certain transactions, such as trade in goods and services and financial transactions, and/or (ii) require U.S. persons to block the assets and property of persons designated under the relevant Executive order or law. The particular prohibitions and/or obligations of U.S. persons vary by program. OFAC can issue licenses to U.S. persons to engage in transactions

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B. Charitable organizations are encouraged to adopt practices in addition to those required by law that provide additional assurances that all assets [3] are used exclusively for charitable or other legitimate purposes.[4]

C. Individuals acting in a fiduciary capacity for any charitable organization should exercise due care in the performance of their responsibilities, consistent with applicable common law as well as local, state, and federal statutes and regulations.

D. Governance, fiscal and programmatic responsibility and accountability are essential components of charitable work and must be reflected at every level of a charitable organization and its operations.

III. Governance Accountability and Transparency

A. Governing Instruments: Charitable organizations should operate in accordance with governing instruments, e.g., charter, articles of incorporation, bylaws, etc. The governing instruments should:

1. Delineate the charity's basic goal(s) and purpose(s);

2. Define the structure of the charity, including the composition of its governing body, how such body is selected and replaced, and the authority and responsibilities of the body;

3. Set forth requirements concerning financial reporting, accountability, and practices for solicitation and distribution of funds; and

4. State that the charity shall comply with all applicable local, state, and federal laws and regulations.

B. Independent Oversight: It is important for charitable organizations to have independent oversight of charitable operations, and each charitable organization should determine what oversight structure best suits that organization and will provide for unbiased scrutiny of its operations. The following provisions set forth basic principles for the creation of a transparent and accountable oversight body (the ''governing board'').

1. Members of the governing board ordinarily should not have an active role in the day-to-day management of the charitable organization.[5]

The charity should establish a conflict of interest policy for both members of the governing board and employees. That policy should establish procedures to be followed if a member of the governing board or employee has a conflict of interest or a perceived conflict of interest relating to the management or operations of the charity.

2. The governing board should be responsible for the charitable organization's compliance with relevant laws, its finances and accounting practices and for the adoption, implementation, and oversight of practices, including financial recordkeeping that will safeguard charitable assets effectively.

3. The governing board should maintain records of its decisions.

4. Charities should maintain and make publicly available a current list of members of the governing board, their salaries and their affiliation with any subsidiary or affiliate of the charitable organization.

5. While fully respecting individual privacy rights, charities should maintain records of additional identifying information about the members of the governing board, such as available home, email and URL addresses, social security number, citizenship, etc.

6. While fully respecting individual privacy rights, charities should maintain records of identifying information for the members of the governing boards of any subsidiaries or affiliates [6] receiving funds from them.

7. When served with process or when other appropriate authorization exists, charities should produce requested records maintained in accordance with these Guidelines to the appropriate regulatory/supervisory and law enforcement authorities in a timely fashion.

C. Key Employees [7]

1. Charities should maintain and make publicly available a current list of their five highest paid or most influential employees (the key employees) and the salaries and direct or indirect benefits they receive.

2. While fully respecting individual privacy rights, charities should maintain records containing identifying information (such as available home, email and URL addresses, social security or other identification number—*e.g.*, taxpayer identification number, national identity, or passport number—citizenship, etc.) about their key, non-U.S. employees working abroad. Such information should be similar to that maintained by charities in the normal course of operations about all U.S. employees, wherever employed, and foreign employees working in the United States.

3. While fully respecting individual privacy rights, charities should maintain records containing identifying information for the key employees of any subsidiaries or affiliates receiving funds from them.

IV. Financial Accountability and Transparency

A. The charity should have a budget, adopted in advance on an annual basis and approved and overseen by the governing board.

B. The governing board should appoint one individual to serve as the financial/accounting officer who should be responsible for day-to-day control over the charity's assets.

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that would otherwise be prohibited, if there is a policy-permissible reason to do so, and if permitted by statute. Further information on how to apply for specific licenses is available at *http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml#license*.

For further information on OFAC-administered sanctions programs and general licensing under these programs, please see *http://www.treas.gov/offices/enforcement/ofac*.

OFAC guidelines for non-governmental organizations wishing to undertake humanitarian activities in sanctioned countries are available at *http://www.treas.gov/offices/enforcement/ofac/regulations/ngo_reg.pdf*.

Other helpful guidance materials for charities relating to protection from terrorist abuse may be found at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml*.

The United States relies on a wide array of federal criminal statutes in fighting the threat of terrorist financing. Charities should be particularly aware that in its efforts against the financing of terrorism, the U.S. relies on, among others, the federal statutes that prohibit:

- the financing of terrorism (18 U.S.C. 2339C),
- providing material support or resources to terrorists (18 U.S.C. 2339A), and
- providing material support or resources to designated terrorist organizations (18 U.S.C. 2339B).

In that effort, the U.S. also particularly relies upon the federal statutes which criminalize:

- the laundering of monetary instruments (18 U.S.C. 1956), and
- engaging in monetary transactions in property derived from specified unlawful activity (18 U.S.C. 1957).

[3] An asset is any item of value, including, but not limited to, services, resources, business, equitable holdings, real estate, stocks, bonds, mutual funds, currency, certificates of deposit, bank accounts, trust funds, and the property and investments placed therein.

[4] A charitable organization may never use charitable assets for illegal purposes; however, a charitable organization may accrue unrelated business taxable income in the course of legitimately doing business as a charitable organization. Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business taxable income.

[5] Certain charitable organizations, such as houses of worship, certain trusts, and corporations sole, may not be able to apply this practice due to their varying organizational and operational structures.

[6] Subsidiaries or affiliates are organizations that are subject to the general supervision or control of a parent or central organization.

[7] Key employees include not only highly compensated employees but employees who have responsibilities, powers, or influence similar to those of officials, directors, or trustees. Key employees also include chief management and administrative officials of a charitable organization, including those involved in the disbursement of funds.

C. If the charity's total annual gross income exceeds $250,000,[8] the governing board should select an independent certified public accounting firm to audit the finances of the charity and to issue a publicly available, audited financial statement on an annual basis.

D. Solicitations for Funds

1. The charity should clearly state its goals for and purposes of soliciting funds so that anyone examining the charity's disbursement of funds can determine whether the charity is adhering to those goals.

2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.

3. The charity should substantiate on request that solicitations and informational materials, distributed by any means, are accurate, truthful, and not misleading, in whole or in part.

4. The charity should fully, immediately, and publicly disclose if it makes a determination that circumstances justify applying funds for a charitable purpose different from the purpose for which such funds were contributed or solicited.

E. Receipt and Disbursement of Funds

1. The charity should account for all funds received and disbursed in accordance with generally accepted accounting principles and the requirements of the Internal Revenue Code. The charity should maintain records of the salaries it pays and the expenses it incurs (domestically and internationally).

2. The charity should include in its accounting of all charitable disbursements the name of each grantee,[9] the amount disbursed, the date, and form of payment for each disbursement.

3. The charity, after recording, should promptly deposit all received funds into an account maintained by the charity at a financial institution. In particular, all currency donated should be promptly deposited into the charity's financial institution account.

4. The charity should make disbursements by check or wire transfer rather than in currency whenever such financial arrangements are reasonably available. Where these financial services do not exist or other exigencies require making disbursements in currency (as in the case of humanitarian assistance provided in rural areas of many developing countries, or in remote areas afflicted by natural disasters), the charity should disburse the currency in the smallest increments sufficient to meet immediate and short-term needs or specific projects/initiatives rather than in large sums intended to cover needs over an extended time frame, and it should exercise oversight regarding the use of the currency for the intended charitable purposes, including keeping detailed internal records of such currency disbursements.

F. Mechanisms for Public Disclosure of Distribution of Resources and Services

1. The charity should maintain and make publicly available a current list of any branches, subsidiaries, and/or affiliates that receive resources and/or services from the charity.

2. The charity should make publicly available or provide to any member of the general public, upon request, an annual report. The annual report should describe the charity's purpose(s), programs, activities, tax exempt status, the structure and responsibility of the governing board of the charity, and financial information.

3. The charity should make publicly available or provide to any member of the general public, upon request, complete annual financial statements, including a summary of the results of the charity's most recent audit. The financial statements should present the overall financial condition of the charity and its financial activities in accordance with generally accepted accounting principles and reporting practices.

V. Programmatic Verification

A. Supplying Resources

When supplying charitable resources (monetary and in-kind contributions), fiscal responsibility on the part of a charity should include:

1. Determining that the potential grantee of monetary or in-kind contributions has the ability to both accomplish the charitable purpose of the grant and protect the resources from diversion to non-charitable purposes or exploitation by terrorist organizations and/or their support networks;

2. Reducing the terms of the grant to a written agreement signed by both the charity and the grantee;

3. Ongoing monitoring of the grantee and the activities funded under the grant for the term of the grant; and

4. Correcting any misuse of resources by the grantee and terminating the relationship should misuse continue.

B. Supplying Services

When supplying charitable services, fiscal responsibility on the part of a charity should include:

1. Appropriate measures to reduce the risk that its assets would be used for non-charitable purposes or exploitation by terrorist organizations and/or their support networks; and

2. Sufficient auditing or accounting controls to trace services or commodities between delivery by the charity and/or service provider and use by the grantee.

C. Programmatic Review

The charity should review the programmatic and financial operations of each grantee as follows:

1. The charity should require periodic reports from grantees on their operational activities and their use of the disbursed funds;

2. The charity should require grantees to take reasonable steps to ensure that funds provided by the charity are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organizations. Periodically, a grantee should apprise the charity of the steps it has taken to meet this goal; and

3. The charity should perform routine, on-site audits of grantees to the extent reasonable—consistent with the size of the disbursement, the cost of the audit, and the risks of diversion or abuse of charitable resources—to ensure that the grantee has taken adequate measures to protect its charitable resources from diversion to, or abuse or influence by, terrorists or their support networks.

VI. Anti-Terrorist Financing Best Practices

Charities should consider taking the following steps before distributing any charitable funds (and in-kind contributions). As explained in Section I, these suggested steps are voluntary. The purpose of these steps is to enable charities to better protect themselves from the risk of terrorist abuse and to

[8] The $250,000 figure is drawn from the June 2005 final report to Congress of the Panel on the Nonprofit Sector, convened by Independent Sector. This report, which offers a comprehensive approach to improving oversight and governance of charitable organizations, recommends independent financial audits for charities that have more than $250,000 in total annual revenue. This report is available at *http://www.nonprofitpanel.org/final/*.

[9] The term ''grantee,'' as it is used throughout these Guidelines, means an immediate grantee of charitable resources or services. To the extent reasonably practicable, charitable organizations should also apply or ensure the existence of applicable safeguards (as described in Sections III, IV, V, and VI) in any downstream sub-grantees or recipients to protect charitable resources from exploitation by terrorists, terrorist organizations, or terrorist supporters. Charities should not enter into a relationship with a grantee where any doubts exist about the grantee's ability to ensure safe delivery of charitable resources independent of influence by or association with any terrorist organization.

facilitate compliance with U.S. laws, statutes, and regulations, with which all U.S. persons, including U.S. charities, must comply. Depending upon the risk profile of an individual charitable organization, adopting all of these steps may not be applicable or appropriate. When taking these steps, charities should apply a risk-based approach, particularly with respect to engagement with foreign grantees due to the increased risks associated with overseas charitable activity.

A. The charity should collect the following basic information about grantees:

1. The grantee's name in English, in the language of origin, and any acronym or other names used to identify the grantee; [10]

2. The jurisdictions in which a grantee maintains a physical presence;

3. Any reasonably available historical information about the grantee that assures the charity of the grantee's identity and integrity, including: (i) the jurisdiction in which a grantee organization is incorporated or formed; (ii) copies of incorporating or other governing instruments; (iii) information on the individuals who formed and operate the organization; and (iv) information relating to the grantee's operating history;

4. The available postal, e-mail and URL addresses and phone number of each place of business of a grantee;

5. A statement of the principal purpose of the grantee, including a detailed report of the grantee's projects and goals;

6. The names and available postal, e-mail and URL addresses of individuals, entities, or organizations to which the grantee currently provides or proposes to provide funding, services, or material support, to the extent reasonably discoverable;

7. The names and available postal, e-mail and URL addresses of any subcontracting organizations utilized by the grantee;

8. Copies of any public filings or releases made by the grantee, including the most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and

9. The grantee's sources of income, such as official grants, private endowments, and commercial activities.

B. The charity should conduct basic vetting of grantees as follows:

1. The charity should conduct a reasonable search of publicly available information to determine whether the grantee is suspected of activity relating to terrorism, including terrorist financing or other support. Charities should not enter into a relationship with a grantee where any terrorist-related suspicions exist; [11]

2. The charity should assure itself that grantees do not appear on OFAC's master list of Specially Designated Nationals (the ''SDN List''), maintained on OFAC's Web site at *http://www.treas.gov/offices/enforcement/ofac/sdn/,* [12] and are not otherwise subject to OFAC sanctions. [13]

3. With respect to key employees, members of the governing board, or other senior management at a grantee's principal place of business, and for key employees at the grantee's other business locations, the charity should, to the extent reasonable, obtain the full name in English, in the language of

[10] Charities should also be mindful of the possibility that a grantee may have changed its name or transformed its organizational structure to avoid being associated with prior questionable activity. If a charity has any reason to believe that the grantee is operating under a different identity or has used a different name in the past, the charity should undertake reasonable efforts to uncover any such prior identity or name.

[11] List-checking alone (as described throughout this section) does not guarantee the safe and secure delivery of charitable funds and services in high-risk areas. For this reason, the Guidelines encourage charities to employ all reasonably available resources both when determining the level of risk in a particular charitable operation and when engaging in appropriate vetting procedures. One example of publicly available information of which charities should be aware is the Terrorist Exclusion List (the ''TEL''). The TEL was created pursuant to the USA PATRIOT Act, which authorizes the Secretary of State to designate organizations or groups for inclusion on the TEL in consultation with or upon the request of the Attorney General. Inclusion on the TEL allows the U.S. Government to exclude or deport aliens who provide material assistance to, or solicit assistance for, designated TEL organizations. Although many of the organizations included on the TEL are also included on the Office of Foreign Assets Control (''OFAC'') SDN List, several TEL organizations are not listed on the SDN List because of the different purposes and legal criteria associated with these lists.

TEL designations do not trigger any legal obligations for U.S. persons; however, the TEL does provide charities with additional terrorist-related information that may assist charities in making well-informed decisions on how best to protect themselves from terrorist abuse or association. For further information regarding the TEL, including access to the list containing all TEL designees, please refer to the U.S. Department of State's Web site at *http://www.state.gov/s/ct/rls/fs/2004/32678.htm.*

[12] The master SDN List is an integrated listing of designated parties with whom U.S. persons are prohibited from providing services or conducting transactions and whose assets are blocked. OFAC's designations are available in a variety of formats and can easily be broken down into subsets of the master list by program, by country of residency, individuals vs. entities, and other variations for appropriate use in a charity's risk-based approach. Each charity should determine which OFAC listings align with the specific risks the charity faces in its operations and should check grantees accordingly.

OFAC routinely updates information on its targets, including persons designated under country-based and list-based economic sanctions programs, such as individuals and entities designated under the various Executive orders and statutes aimed at terrorism. OFAC offers a free email subscription service that enables subscribers to keep current with these updates. With respect to terrorism-related OFAC sanctions programs, SDN listings include persons designated under Executive Order 13224, Executive Order 12947, or the Antiterrorism and Effective Death Penalty Act of 1996, as amended; such persons are called ''Specially Designated Global Terrorists'' or ''SDGTs'', ''Specially Designated Terrorists'' or ''SDTs'', or ''Foreign Terrorist Organizations'' or ''FTOs'', respectively. SDN listings also include parties subject to OFAC sanctions pursuant to other list-based programs (such as counter-WMD proliferation and counter-narcotics) and country-based programs.

In addition to checking appropriate SDN listings, charities should consult OFAC's Web site for other information relating to sanctioned activities or countries that may implicate their operations.

[13] As discussed in Footnote 12, the SDN List is an integrated list of individuals, organizations, and entities that the U.S. Government has designated pursuant to both country-based and list-based OFAC administered sanctions programs. U.S. persons, including U.S.-based charities, are prohibited from dealing with any of the parties included on the SDN List. A charity wishing to engage in activity in a country subject to economic sanctions should contact OFAC directly about any authorizations necessary to engage in such activity. Although the SDN List includes persons meeting the criteria established in the authorities or Executive orders that define certain OFAC sanctions programs, transactions with actors not named on the SDN List may nevertheless violate U.S. sanctions due to interests of designated parties in such transactions or prohibitions owing to country-based OFAC administered sanctions programs. For example, if a charity engages in a particular transaction with a party not on the SDN List that involves the property or interests in property of a designated actor, the transaction may be subject to OFAC sanctions. This underscores the importance of charities knowing their grantees and monitoring their programs and transactions through the use of appropriate due diligence measures. Therefore, while the SDN List is a critically important compliance tool that can assist charities in meeting their legal obligations under the variety of sanctions programs that OFAC administers, it should only form one part of a charitable organization's broader risk-based approach to protect against the risks of terrorist abuse.

origin, and any acronym or other names used; nationality; citizenship; current country of residence; and place and date of birth. The charity should assure itself that none of these individuals is subject to OFAC sanctions.

4. Charities should be aware that other nations may have their own lists of designated terrorist-related individuals, entities, or organizations pursuant to national obligations arising from United Nations Security Council Resolution 1373 (2001).[14]

5. With respect to the key employees, members of the governing board, or other senior management described in the preceding paragraph, the charity should also consider consulting publicly available information to ensure that such parties are not reasonably suspected of activity relating to terrorism, including terrorist financing or other support; and

6. As a pre-condition to the issuance of a charitable grant, the charity should require grantees to certify that they are in compliance with all laws, statutes, and regulations restricting U.S. persons from dealing with any individuals, entities, or groups subject to OFAC sanctions, or, in the case of foreign grantees, that they do not deal with any individuals, entities, or groups subject to OFAC sanctions or any other persons known to the foreign grantee to support terrorism or to have violated OFAC sanctions.

C. The charity should conduct basic vetting of its own key employees as follows:

1. The charity should conduct a reasonable search of publicly available information to determine whether any of its key employees is suspected of activity relating to terrorism, including terrorist financing or other support. Charities should not employ a person where any terrorist-related suspicions exist; and

2. The charity should assure itself that none of its key employees is subject to OFAC sanctions or have violated OFAC sanctions.

D. Should a charity's vetting practices lead to a finding that any of its own key employees, any of its grantees, or any of the key employees, members of the governing board, or other senior management of its grantees is suspected of activity relating to terrorism, including terrorist financing or other support, there are a number of available mechanisms and resources that a charity may utilize:

1. If the charity believes there is a match between the name of one of the individuals or organizations listed above and a name on the SDN List, the charity should take appropriate due diligence steps to ascertain whether the match is valid. These steps and further guidance are available on OFAC's Web site at *http://www.treas.gov/offices/enforcement/ofac/faq/answer.shtml#hotline;* and

2. The charity should provide information on any suspicious activity relating to terrorism, including terrorist financing or other support, which does not directly involve an OFAC match, through a referral form available on Treasury's Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.* In addition, the Federal Bureau of Investigation maintains local field offices to which charities should provide such suspicious information. A list of the locations and phone numbers of the FBI's field offices is available at *http://www.fbi.gov/contact/fo/fo.htm.*

Annex to Guidelines

The risk of terrorist abuse facing charitable organizations is ongoing and significant and cannot be measured from the important but relatively narrow perspective of terrorist diversion of charitable funds to support terrorist acts. Rather, terrorist abuse also includes the exploitation of charitable services and activities to radicalize vulnerable populations and cultivate support for terrorist organizations and activities. As reported through a wide range of media sources, terrorist organizations deliberately establish, infiltrate, or otherwise exploit charitable organizations to build terrorist support networks.[15] Recent developments—such as the exploitation by Lashkar e Tayyiba (a.k.a. Jamaat-ud-Dawa) and other terrorist entities/charitable fronts of relief efforts following the October 2005 earthquake in South Asia, the critical role of Hamas-associated charities in building popular support in the Palestinian territories for the terrorist organization, and Hezbollah's substantial control of charitable distribution networks in southern Lebanon—demonstrate the ongoing intent and effectiveness of terrorist organizations in exploiting charitable organizations and relief efforts.

Treasury, together with other Departments across the U.S. Government, is continuing to combat such terrorist abuse of the charitable sector by: (i) Administratively sanctioning terrorist-related charities and charitable officials through terrorist financing designations; (ii) contributing financial information and investigative resources and expertise to advance criminal investigations and prosecutions of charities and charitable officials providing material support for designated terrorist organizations or

[14] Under United Nations Security Council Resolution 1373 (2001) (UNSCR 1373), UN Member States must generally freeze without delay the funds and other financial assets or economic resources of persons financing or otherwise supporting terrorist activity or terrorist-related individuals, entities, or organizations. In addition, UN Member States must generally prohibit their nationals from engaging in transactions with such parties. In order to implement these obligations under UNSCR 1373, each UN member state should, as a practical matter, develop its own list of parties sanctioned under the criteria of UNSCR 1373. For example, the SDN List incorporates those parties designated by the United States pursuant to its national obligations under UNSCR 1373.

The Guidelines do not legitimize or endorse the UNSCR 1373 lists adopted by foreign jurisdictions. Rather, this information is intended to assist charities in developing their own risk-based programs based upon a full understanding of the law in those jurisdictions in which they may operate. Charities operating in a foreign jurisdiction may choose to take the additional precautionary measures of determining whether that jurisdiction maintains a national list under UNSCR 1373 and screening the identities of grantee organizations (including their directors and key employees) against any such list. Such precautionary measures may protect charities from potential sanctions or other consequences to which they might be subject from foreign jurisdictions as a result of engaging in transactions with individuals, entities, or organizations deemed to be financing or otherwise supportive of terrorist activity under the laws of those jurisdictions.

[15] *See, e.g.,* Matthew Levitt, *HAMAS: Politics, Charity and Terrorism in the Service of Jihad;* New Haven, CT: Yale Univ. Press, 2006 (documenting the logistical and financial support Hamas charities provide for the group's political and terrorist activities); Heather Timmons, *British Study Charitable Organizations for Links to Plot,* N.Y. Times, Aug. 25, 2006 (describing the risks inherent in delivering charitable aid and resources to high-risk areas where terrorist organizations are known to operate); Robert F. Worth & Hassan M. Fattah, *Relief Agencies Find Hezbollah Hard to Avoid,* N.Y. Times, Aug. 23, 2006 (describing Hezbollah's efforts to cultivate support by controlling the provision of charitable resources and services across southern Lebanon); Laila Bokhair, *Political Struggle Over Earthquake Victims,* Norwegian Defense Research Establishment, Nov. 23, 2005 (documenting terrorist organizations such as Lashkar-e-Taiba and Jaish-e-Mohammed efforts to provide humanitarian aid to affected areas in the months following the earthquake in South Asia); Christopher Kremmer, *Charities Linked to Extremists Lead Quake Relief,* Age, Nov. 21, 2005 (reporting that in addition to providing relief in South Asia, terrorist organizations are recruiting and indoctrinating orphan children in their extensive network of orphanages); Evan Kohlmann, *The Role of Islamic Charities in International Terrorist Recruitment and Financing* (2006), Danish Institute for International Studies: available at *http://www.diis.dk/graphics/Publications/WP2006/DIIS%20WP%202006-7.web.pdf* (tracing the historical link between charitable organizations and terrorist activities from the Soviet-Afghan war through to the present); BBC News, *Faith, hate and charity: Transcript,* BBC One, Recorded from Transmission, July 30, 2006 (reporting on one of Britain's leading Islamic charities, Interpal, and illustrating Interpal's use of a network of charities in Gaza and the West Bank to support and fund Hamas, a terrorist organization designated by the U.S. Government and the European Union).

activities; (iii) facilitating international action to address these abuses; and (iv) conducting comprehensive outreach to the charitable sector to raise awareness of terrorist exploitation and the steps charities can take to protect themselves from such abuse.

U.S. designations of charities and charitable officials demonstrate the breadth of the problem of terrorist infiltration and exploitation of the charitable sector. To date, the United States has designated forty-three charities worldwide and twenty-nine associated individuals for their support of terrorist organizations and operations. These seventy-two charities and individuals comprise over fifteen percent of all U.S.-designated terrorist supporters or financiers, indicating the primary importance of charities as a critical means of support for terrorist organizations and activities. Treasury maintains a summary of all designated charities, including unclassified background information summarizing the basis of each designation, to assist the donor and charitable communities in identifying those charities associated with terrorist financing and support. Further information and press releases relating to these designations are available on the Treasury Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_exec-orders.shtml.*

In addition to these ongoing efforts by Treasury and the U.S. Government, other countries and organizations from around the world have recognized and helped curb abuse of the charitable sector by terrorist organizations. The Financial Action Task Force (FATF)—the premier inter-governmental organization responsible for developing and promoting global policies to combat money laundering and terrorist financing—has studied the problem of terrorist financing and abuse across the charitable sector globally and has published typologies of such abuse. The FATF has also published Best Practices for Non-Profit Organizations and more recently issued interpretive guidance strengthening the international standard for combating terrorist abuse of non-profit organizations. Additionally, FATF style regional bodies (FSRBs) such as the Asia Pacific Group (APG), Eurasian Group (EAG) and the Middle East and North Africa Financial Action Task Force (MENA FATF) are developing typologies and studies on the active threat of terrorist financing and support through charities that operate within their regions.[16] These organizations and their member countries are implementing measures to actively combat this threat through the development and application of supervisory, investigative, and financial authorities to identify and dismantle charities engaged in terrorist financing or support. Many of these documents, which underscore the threat that terrorist organizations and operations pose to the charitable sector, are available on the Treasury Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.*

Treasury continually engages in outreach and updates its Web site to communicate useful information regarding: (i) The ongoing risks of terrorist abuse in the charitable sector; (ii) ongoing U.S. and other governmental efforts to mitigate these risks and combat terrorist abuse, and (iii) steps the sector can take to protect against such abuse. Treasury's Guidelines represent one essential component and product of the ongoing outreach that Treasury is conducting with the charitable sector to empower and protect the sector from terrorist abuse. Another example of available resources is Treasury's December 2005 advisory paper, which provides information to charities delivering relief in areas affected by the 2005 South Asia earthquake by detailing typologies of terrorist abuse of charities and reports on activity by militant and terrorist groups in those areas. This paper also shows, through media reports, the extent to which terrorist organizations pose a risk to charities trying to deliver aid in unstable areas, where terrorist organizations themselves and/or their charitable fronts are often engaged in delivering relief as an effective recruitment mechanism in building broader support for their organizations.

Treasury will continue its outreach and informational efforts as part of its larger mission to combat terrorist financing and safeguard the charitable sector from terrorist abuse.

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[16] The efforts of the MENA FATF are particularly exemplary of international efforts to combat terrorist abuse of charities. MENA FATF Member States have issued a best practices paper, based on the FATF's international standard for combating terrorist abuse of the non-profit sector, tailored to the specific religious, social, and economic values of the region. The comprehensive framework, crafted by the MENA FATF, outlines legislative, regulatory, and procedural measures to ensure that the charitable sector is not misused or abused by terrorist financiers. The MENA FATF charities best practices paper is an indispensable tool for the Middle East and North Africa region in helping to protect against terrorist abuse of charities by offering guidance to promote transparency and accountability in the charitable sector.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report) for banks and the Thrift Financial Report (TFR) for savings associations, which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 2, 2007.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room,

Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *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 docket 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 in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Steven F. Hanft (202–898–3907), Clearance Officer, Attn: Comments, Room MB–2088, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–0023 (TFR: Schedule DI Revisions),'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include ''1550–0023 (TFR: Schedule DI Revisions)'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–0023 (TFR: Schedule DI Revisions).''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''1550–0023 (TFR: Schedule DI Revisions).''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the Agencies 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: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0*).

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Long, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report and the TFR, which are currently approved collections of information.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report). *Form Number:* Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only). *Frequency of Response:* Quarterly. *Affected Public:* Business or other for-profit.

OCC: OMB Number: 1557–0081. *Estimated Number of Respondents:* 1,900 national banks. *Estimated Time per Response:* 44.31 burden hours. *Estimated Total Annual Burden:* 336,756 burden hours.

Board: OMB Number: 7100–0036. *Estimated Number of Respondents:* 919 state member banks. *Estimated Time per*

Response: 51.27 burden hours. *Estimated Total Annual Burden:* 188,469 burden hours.

FDIC: OMB Number: 3064–0052. *Estimated Number of Respondents:* 5,247 insured state nonmember banks. *Estimated Time per Response:* 35.52 burden hours. *Estimated Total Annual Burden:* 745,494 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.*, size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 630 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR). *Form Number:* OTS 1313 (for savings associations). *Frequency of Response:* Quarterly. *Affected Public:* Business or other for-profit.

OTS: OMB Number: 1550–0023. *Estimated Number of Respondents:* 854 savings associations. *Estimated Time per Response:* 36.5 burden hours. *Estimated Total Annual Burden:* 124,684 burden hours.

The TFR estimates in this notice are carried forward from the burden estimates that appeared in OTS's final Paperwork Reduction Act notice concerning items related to retirement deposit accounts (71 FR 47866, August 18, 2006).

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for savings associations). Except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole.

Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

Current Actions

I. Overview

The four agencies are proposing to replace certain information currently collected in the Call Report and TFR for deposit insurance assessment purposes with the information described in proposed amendments to Part 327 of the FDIC's regulations (71 FR 28790, May 18, 2006). The four agencies also propose to revise the information collected in the Call Report and TFR on time deposits, particularly with respect to certain retirement accounts affected by the FDIC's amended deposit insurance regulations.

In addition, the OCC, the Board, and the FDIC (the banking agencies) propose to implement a number of other changes to the Call Report requirements, most of which are expected to apply to a small percentage of banks. First, the banking agencies would revise the Call Report to collect certain data on fair value measurements from those institutions that choose, under generally accepted accounting principles, to apply a fair value option to one or more financial instruments and one or more classes of servicing assets and liabilities and from certain institutions that report trading assets and liabilities. The banking agencies will also collect an item to capture the change in the fair value of liabilities under the fair value option that is attributable to a change in a bank's own creditworthiness for purposes of measuring a bank's regulatory capital under the banking agencies' capital adequacy standards. Second, the banking agencies propose to collect certain data in the Call Report on 1–4 family residential mortgages with terms that allow for negative amortization. The banking agencies currently do not collect any supervisory data on such loans. Finally, the banking agencies propose to clarify the Call Report instructions for assets serviced for others by explicitly stating that such servicing includes the servicing of loan participations.

These proposed revisions to the Call Report and the TFR, which have been approved for publication by the FFIEC and are discussed in more detail below, would take effect as of March 31, 2007, and, for certain deposit insurance assessment revisions, March 31, 2008. The specific wording of the captions for the new or revised Call Report and TFR data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

Type of Review: Revision and extension of currently approved collections.

II. Discussion of Proposed Revisions

A. Deposit Insurance Assessment Revisions to the Call Report and TFR

On May 18, 2006, the FDIC issued proposed amendments to Part 327 of its regulations, ''Assessments,'' under which the FDIC's computation of deposit insurance assessments for certain institutions would be determined using daily averages for deposits rather than quarter-end balances. In addition to the proposed amendments, the agencies are proposing to revise and reduce the overall reporting requirements related to deposit insurance assessments in both the Call Report and the TFR in order to simplify regulatory reporting. Key elements of the proposed revised reporting requirements are:

- Institutions will separately report (a) gross deposits as defined in Section 3(l) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(l)) before any allowable exclusions and (b) allowable exclusions;
- The same data items will be reported for both quarter-end and daily average deposits;
- All institutions will report using quarter-end deposits and allowable exclusions; and
- All institutions with $300 million or more in assets, and other institutions that meet specified criteria, will also report daily averages for deposits and allowable exclusions in addition to quarter-end amounts.

The proposal would provide an interim period covering the March 31, 2007, through December 31, 2007, report dates during which institutions can submit Call Reports and TFRs using either the current or revised formats for reporting data for measuring their assessment base. An institution that chooses to begin reporting under the revised format in any quarter during the interim period must continue to report under the revised format through the rest of the interim period and may not revert back to the current reporting format. The revised reporting format will take effect for all institutions on March 31, 2008, at which time the current format will be eliminated. Although no institution that chooses to

report under the revised format during the 2007 interim period would be required to report daily averages during this period, any institution may elect to report daily averages as of any quarter-end report date in 2007. However, once an institution begins to report daily averages (even during the interim period), it must continue to report daily averages each quarter thereafter in its Call Report or TFR.

Currently, the assessment base definition as detailed in 12 CFR 327.5 of the FDIC's regulations has been driven by the agencies' regulatory reporting requirements. Therefore, as the reporting requirements for deposits in the Call Report and TFR changed over time, the regulatory definition of the assessment base required periodic updates. As a result of the Federal Deposit Insurance Reform Act, the FDIC has proposed to revise the definition of the assessment base within its regulations to be consistent with Section 3(l) of the FDI Act. This will eliminate the need for periodic updates to the FDIC's assessment regulations in response to outside factors and allow a simplification of the associated reporting requirements. In addition, to address timing issues with quarter-end reporting, the FDIC will use daily average deposits and exclusions over the quarter instead of quarter-end totals for deposits and exclusions to compute the assessment base for institutions with $300 million or more in assets and other institutions who meet specified criteria, which are discussed below. Any institution that reports less than $300 million in assets and does not meet the other specified criteria may opt permanently to determine its assessment base using daily averages.

At present, 23 items are required in the Call Report to determine a bank's assessment base and eight items are required in the TFR to determine a savings association's assessment base. The agencies are proposing changes to the way the assessment base is reported that would effectively reduce the number of reported items to as few as two for certain small institutions (without foreign offices) and no more than six for other institutions. Specifically, the banking agencies are proposing to replace items 1 through 12 (including their subitems) on Schedule RC–O, ''Other Data for Deposit Insurance and FICO Assessments,'' and OTS is proposing to replace the eight items in the section of Schedule DI, ''Consolidated Deposit Information,'' for ''Deposit and Escrow Data for Deposit Insurance Premium Assessments'' with the following six items:

- Total Deposit Liabilities as Defined in Section 3(l) of the FDI Act before Exclusions;
- Total Allowable Exclusions (including Foreign Deposits);
- Total Foreign Deposits (included in Total Allowable Exclusions);
- Total Daily Average of Deposit Liabilities as Defined in Section 3(l) of the FDI Act before Exclusions;
- Total Daily Average Allowable Exclusions (including Foreign Deposits);
- Total Daily Average Foreign Deposits (included in Total Daily Average Allowable Exclusions).

Thus, instead of starting with deposits as reported on the balance sheet of the Call Report and TFR and making adjustments to these reported deposits for purposes of measuring an institution's assessment base, which is the present method, the computation of the institution's assessment base under the proposed amendments to the FDIC's assessment regulations and these proposed regulatory reporting revisions will start with the gross total deposit liabilities that meet the statutory definition of deposits in Section 3(l) of the FDI Act before any allowable exclusions from the definition. The allowable exclusions, which are set forth in Section 3(l)(5) and other sections of the FDI Act and in the FDIC's regulations, include foreign deposits (including International Banking Facility deposits) and other deposits described below. As the next step in the assessment base calculation, an institution would report the total amount of all allowable exclusions from the statutory definition of deposits (with separate disclosure of foreign deposits, if any). Total Deposit Liabilities as Defined in Section 3(l) of the FDI Act before Exclusions minus Total Allowable Exclusions would be the institution's Assessment Base. As previously stated, the computation will use either quarter-end balances or daily averages.

The net amount of unposted debits and credits will now not be considered within the definition of the assessment base. For institutions that report daily averages, these debits and credits are captured in the next day's deposits and thus are reflected in the averages. For consistency and because they should not materially affect assessment bases, unposted debits and credits will also not be considered for institutions that only report quarter-end balances.

The agencies believe that the amount of gross total deposit liabilities that meet the statutory definition of deposits is typically found in and supported by the control totals in an institution's deposit systems that provide the detail sufficient to track, control, and handle inquiries from depositors about their specific individual accounts.

These deposit systems can be automated or manual. In any case, control totals for deposit liabilities should be readily available, which should ease an institution's transition to the revised regulatory reporting requirements. Compared to the amount of information that an institution currently reports in order to determine its assessment base, the proposed changes to the reporting requirements should also facilitate the reporting of daily averages for deposits and allowable exclusions since many of the presently reported adjustments will not need to be tracked and averaged separately.

Section 3(1) of the FDI Act states that the term ''deposit'' means

(1) The unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: *Provided,* That, without limiting the generality of the term ''money or its equivalent'', any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection,

(2) Trust funds as defined in this Act received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association,

(3) Money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances

or letters of credit, and withheld taxes: *Provided,* That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness,

(4) Outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) Such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit:

(A) Any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

(i) Such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) The contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) Any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System; and

(C) Any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of the Internal Revenue Code of 1986.

The total amount of allowable exclusions from the assessment base will be reported separately for any institution that maintains such records as will readily permit verification of the correctness of its assessment base. These exclusions include:

Foreign deposits: The obligations described in subparagraphs (A) and (B) of section 3(l)(5) of the FDI Act, quoted above, which generally relate to foreign deposits.

Reciprocal balances: Any demand deposit due from or cash item in the process of collection due from any depository institution (not including a foreign bank or foreign office of another U.S. depository institution) up to the total of the amount of deposit balances due to cash and cash items in the process of collection due such depository institution.

Drafts drawn on other depository institutions: Any outstanding drafts (including advices and authorization to charge the depository institution's balance in another bank) drawn in the regular course of business by the reporting depository institution.

Pass-through reserve balances: Reserve balances passed through to the Federal Reserve by the reporting institution that are also reflected as deposit liabilities of the reporting institution. This is not applicable to an institution that does not act as a correspondent institution in any pass-through reserve balance relationship. An institution that is not a member of the Federal Reserve System generally cannot act as a pass-through correspondent unless it maintains an account for its own reserve balances directly with the Federal Reserve.

Depository institution investment contracts: Liabilities arising from depository institution investment contracts that are not treated as insured deposits under section 11(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(5)). A Depository Institution Investment Contract is a separately negotiated depository agreement between an employee benefit plan and an insured depository institution that guarantees a specified rate for all deposits made over a prescribed period and expressly permits benefit-responsive withdrawals or transfers.

In addition to quarter-end balance reporting, institutions that meet certain criteria would be required to report average daily deposit liabilities and average daily allowable exclusions to determine their assessment base effective March 30, 2008. The amounts to be reported would be averages of the balances as of the close of business for each day for the calendar quarter. For days that an office of the reporting institution (or any of its subsidiaries or branches) is closed (*e.g.*, Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day would be used. An office is considered closed if there are no transactions posted to the general ledger as of that date.

The requirement for an institution to report daily averages would apply to any institution that:

(1) Reports $300 million or more in total assets in its March 31, 2007, Call Report or TFR. The institution would be required to report daily averages beginning in its March 31, 2008, Call Report or TFR.

(2) Reports $300 million or more in total assets in two consecutive Call Reports or TFRs beginning with its June 30, 2007, report. The institution would be required to report daily averages in its Call Report or TFR beginning March 31, 2008, or on the report date six months after the second consecutive quarter in which it reported $300 million or more in total assets, whichever is later. For example, if an institution reported $300 million or more in total assets in its reports for June 30 and September 30, 2007, it would begin to report daily averages in its report for March 31, 2008. If the institution reported $300 million or more in total assets in its reports for December 31, 2007, and March 31, 2008, it would begin to report daily averages in its report for September 30, 2008.

(3) Becomes newly insured after March 31, 2007. The institution would be required to report daily averages in its Call Report or TFR beginning March 31, 2008, or on the first report date after becoming insured, whichever is later. If daily averages are reported in the first Call Report or TFR the institution files after becoming insured, the daily averages would include only the dollar amounts for the days since the institution began operations.

After an institution has begun to report daily averages for its total deposits and allowable exclusions, either voluntarily or because it is required to do so, the institution cannot switch back to reporting only quarter-end balances.

An insured depository institution reporting less than $300 million in total assets in its March 31, 2007, Call Report or TFR may continue to determine its assessment base using quarter-end balances until it meets one of the requirements for reporting daily averages described above. Alternatively, the institution may opt permanently to determine its assessment base using daily averages.

B. Revision of Certain Time Deposit Information on the Call Report and TFR

The Federal Reserve uses data from Call Report Schedule RC–E, Deposit Liabilities, and from TFR Schedule DI, Consolidated Deposit Information, to ensure accurate construction of the monetary aggregates for monetary policy purposes.[1] In order to more accurately calculate the monetary aggregates, the banking agencies propose to revise two Schedule RC–E items, Memorandum items 2.b, ''Total time deposits of less than $100,000,'' and 2.c, ''Total time deposits of $100,000 or more,'' and add a new Memorandum item 2.c.(1) to this schedule.

In Schedule RC–E, Memorandum item 2.b would be revised to include

[1] In order to calculate the money stock measure M2, the Federal Reserve takes M1 (which consists of currency held by the public, traveler's checks, demand deposits, and other checkable deposits) and adds (1) savings deposits, (2) small-denomination time deposits (time deposits in amounts of less than $100,000) less Individual Retirement Account (IRA) and Keogh balances at depository institutions, and (3) balances in retail money market mutual funds, less IRA and Keogh balances at money market mutual funds.

brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000 as well as brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit. Memorandum item 2.c would be revised to exclude such brokered time deposits. In addition, as a result of the increase in the deposit insurance limit for certain retirement plan deposit accounts from $100,000 to $250,000 earlier this year, a new Memorandum item 2.c.(1) would be added to Schedule RC–E to separately identify the portion of the total time deposits of $100,000 or more reported in Memorandum item 2.c that represents IRA and Keogh Plan accounts.

For the same reasons, OTS proposes to add two new items to Schedule DI of the TFR. These data items would be (1) Time Deposits of $100,000 or More (excluding brokered time deposits participated out by the broker in shares of less than $100,000 and brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit) and (2) IRA/Keogh Accounts included in Time Deposits of $100,000 or More.

C. Reporting of Certain Fair Value Measurements and the Use of the Fair Value Option in the Call Report

On September 15, 2006, the Financial Accounting Standards Board (FASB) issued Statement No. 157, Fair Value Measurements (FAS 157), which is effective for banks and other entities for fiscal years beginning after November 15, 2007. Earlier adoption of FAS 157 is permitted as of the beginning of an earlier fiscal year, provided the bank has not yet issued a financial statement or filed a Call Report for any period of that fiscal year. Thus, a bank with a calendar year fiscal year may voluntarily adopt FAS 157 as of January 1, 2007. The fair value measurements standard provides guidance on how to measure fair value and would require banks and other entities to disclose the inputs used to measure fair value based on a three-level hierarchy for all assets and liabilities that are remeasured at fair value on a recurring basis.[2]

The FASB plans to issue a final standard, *The Fair Value Option for Financial Assets and Financial Liabilities*, before year-end 2006, which would be effective for banks and other entities for fiscal years beginning after December 15, 2006. The FASB's Fair Value Option standard would allow banks and other entities to report certain financial assets and liabilities at fair value with the changes in fair value included in earnings. The banking agencies anticipate that relatively few banks will elect to use the fair value option for a significant portion of their financial assets and liabilities.

The banking agencies plan to clarify the Call Report instructions to explain where financial assets and liabilities measured under the fair value option should be reported in the existing line items of the Call Report. The banking agencies are also proposing to add a new Schedule RC–Q to the Call Report to collect data, by major asset and liability category, on the amount of assets and liabilities to which the fair value option has been applied along with separate disclosure of the amount of such assets and liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hiearchy. The categories are:

- Securities held for purposes other than trading with changes in fair value reported in current earnings;
- Loans and leases;
- All other financial assets and servicing assets;
- Deposit liabilities;
- All other financial liabilities and servicing liabilities; and
- Loan commitments (not accounted for as derivatives).

In addition, the banking agencies propose to collect data on trading assets and trading liabilities in the new schedule from those banks that complete Schedule RC–D, Trading Assets and Liabilities, *i.e.*, banks that reported average trading assets of $2 million or more for any quarter of the preceding calendar year. In the proposed new schedule, such banks would report the carrying amount of trading assets and trading liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hierarchy. Trading assets and trading liabilities are required to be reported at fair value and, thus, are not covered under the fair value option.

The banking agencies anticipate using this fair value information to make appropriate risk assessments for on-site examinations and off-site surveillance. The addition of these data items should result in minimal additional reporting burden for banks because FAS 157 requires disclosure of amounts under all three levels of the fair value hierarchy on a quarterly and annual basis in financial statements.

The FASB's fair value measurements standard requires banks and other entities to consider the effect of a change in their own creditworthiness when determining the fair value of a financial liability. The banking agencies are proposing to add one new item to Schedule RC–R, Regulatory Capital, for the cumulative change in the fair value of all financial liabilities accounted for under the fair value option that is attributable to changes in the bank's own creditworthiness.[3] This amount would be excluded from the bank's retained earnings for purposes of determining Tier 1 capital under the banking agencies' regulatory capital standards.

The banking agencies plan to clarify the instructions to Schedule RI for the treatment of interest income on financial assets and interest expense on financial liabilities measured under a fair value option. The instructions would be modified to instruct banks to separate the contractual year-to-date amount of interest earned on financial assets and interest incurred on financial liabilities that are reported under a fair value option from the overall year-to-date fair value adjustment and report these contractual amounts in the appropriate interest income or interest expense items on Schedule RI.

D. Reporting of Certain Data in the Call Report on 1–4 Family Residential Mortgage Loans With Terms That Allow for Negative Amortization

Recently, the volume of 1–4 family residential mortgage loan products whose terms allow for negative amortization and the number of institutions providing borrowers with such loans has increased significantly. Loans with this feature are structured in a manner that may result in an increase in the loan's principal balance even when the borrower's payments are technically current. When loans with negative amortization are not prudently underwritten and not properly monitored, they raise safety and soundness concerns. However, due to the classification of these loans with all other 1–4 family residential mortgage loans in the Call Report, the banking

[2] The FASB's three-level fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Level 1 inputs are quoted prices in active markets for identical assets or liabilities that the reporting bank has the ability to access at the measurement date (*e.g.*, the Call Report date). Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. Level 3 inputs are unobservable inputs for the asset or liability.

[3] The banking agencies also are planning to issue further guidance on the regulatory capital treatment of this cumulative change, and are considering possible regulatory changes.

agencies have no readily available means of identifying the industry's exposure to such loans. Therefore, the banking agencies propose to collect some Call Report items to monitor the extent of use of negatively amortizing residential mortgage loans in the industry.

The banking agencies propose to collect one memorandum item from all banks on Schedule RC–C, Part I, Loans and Leases, for the total amount of closed-end loans with negative amortization features secured by 1–4 family residential properties. In addition, the banking agencies propose to collect two memorandum items on Schedule RC–C and one memorandum item on Schedule RI, Income Statement, from banks with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The banking agencies' determination of the threshold for significant volume would be based on the aggregate carrying amount of negatively amortizing loans being in excess of a certain dollar amount, *e.g.*, $100 million or $250 million, or in excess of a certain percentage of the total loans and leases (in domestic offices) reported on Schedule RC–C, *e.g.*, five percent or ten percent. For reporting during 2007, a bank with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memorandum items using data reported in its December 31, 2006, Call Report. For reporting in 2008 and subsequent years, the determination would be based on data from the previous year-end Call Report. The banking agencies request comment on the specific dollar amount and percentage of loans that should be used in setting the size threshold for additional reporting on negatively amortizing loans.

The two additional Schedule RC–C memorandum items are (1) the total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed-end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The Schedule RI memorandum item is year-to-date noncash income on closed-end loans with a negative amortization feature secured by 1–4 family residential properties. Banks with negatively amortizing 1–4 family residential loans in excess of the reporting threshold for these items would report these three items for the entire calendar year following the end of any calendar year when this threshold was exceeded.

For the same reasons, OTS proposed on July 31, 2006, to add two new items to Schedule LD of the TFR (71 FR 43286). These items would be the total amount of (1) 1–4 dwelling adjustable rate mortgage loans with negative amortization and (2) total capitalized negative amortization on 1–4 dwelling adjustable rate mortgage loans.

E. Call Report Instructional Clarification for Servicing of Loan Participations

Banks report the outstanding principal balance of assets serviced for others in Memorandum item 2 of Schedule RC–S, ''Servicing, Securitization, and Asset Sale Activities.'' In Memorandum items 2.a and 2.b, banks disclose the amounts of 1–4 family residential mortgages serviced with recourse and without recourse, respectively. Memorandum item 2.c covers all other loans and financial assets serviced for others, but banks are required to disclose the amount of such servicing only if the servicing volume is more than $10 million. The instructions for Memorandum item 2 do not explicitly state whether a bank that has sold a participation in a 1–4 family residential mortgage or other loan or financial asset, which it continues to service, should include the servicing in Memorandum item 2.a, 2.b, or 2.c, as appropriate. The absence of clear instructional guidance has resulted in questions from bankers and has produced diversity in practice among banks.

Subject to the reporting threshold that applies to Memorandum data item 2.c, Memorandum data item 2 was intended to cover the entire volume of loans and other financial assets for which banks perform the servicing function, regardless of whether the servicing involves whole loans and other financial assets or only portions thereof, as is typically the case with loan participations. The risks and responsibilities inherent in servicing are present whether all or part of a loan or financial asset is serviced for the benefit of another party. Accordingly, the banking agencies propose to clarify the instructions to Memorandum item 2 of Schedule RC–S to explicitly state that the amount of loan participations serviced for others should be included in this item.

III. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the Call Report and TFR collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: September 25, 2006.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, October 23, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 24th day of October, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 20, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 06–8982 Filed 10–30–06; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of twenty four newly-designated persons whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.''

DATES: The designation by the Secretary of the Treasury of the twenty four persons identified in this notice pursuant to Executive Order 12978 is effective on October 25, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''), effective at 12:01 a.m. eastern daylight time on October 22, 1995. In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On October 25, 2006, the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State, as well as the Secretary of Homeland Security, designated twenty four persons whose property and interests in property are blocked pursuant to the Order.

The list of additional designees follows:

1. CANO AGUDELO S EN C, Finca La Alambra, Alcala, Valle, Colombia; NIT # 821002095 (Colombia); (ENTITY) [SDNT]
2. COMERCIALIZADORA DE CAFE DEL OCCIDENTE CODECAFE LTDA. (a.k.a. CODECAFE); Carrera 8 No. 23–09 , Ofc. 903, Pereira, Risaralda, Colombia; NIT # 806004106–0 (Colombia); (ENTITY) [SDNT]
3. GAVIOTAS LTDA. (a.k.a. MOTEL CAMPO AMOR; a.k.a. HOTEL SIN PECADOS; a.k.a. ''Hotel Sin PK2''); Calle 4A No. 21–34 Circunvalar, Cartago, Valle, Colombia; NIT # 800032092–7 (Colombia); (ENTITY) [SDNT]
4. GOMEZ MARIN LTDA., Km. 2 Via al Amprao, Ansermanuevo, Valle, Colombia; Km. 2 Via al Amparo, Cartago, Valle, Colombia; Calle 16 No. 1N–74, Cartago, Valle, Colombia; NIT # 800102465–1 (Colombia); (ENTITY) [SDNT]
5. INVERSIONES MACARNIC PATINO Y CIA S.C.S., Calle 19 No. 9–50, Ofc. 505, Pereira, Risaralda, Colombia; Carrera 8 No. 23–09, Ofc. 903, Pereira, Risaralda, Colombia; NIT # 816005011–4 (Colombia); (ENTITY) [SDNT]
6. ORLANDO SABOGAL ZULUAGA E HIJOS & CIA S EN C, Hacienda Portugal, Ansermanuevo, Valle, Colombia; NIT # 80018139–3 (Colombia); (ENTITY) [SDNT]
7. CANO ALZATE, Yolanda Sofia, c/o GAVIOTAS LTDA., Colombia; DOB 25 Apr 1957; POB Cartago, Valle; Cedula No. 31399608 (Colombia); Passport AH506324 (Colombia); (INDIVIDUAL) [SDNT]
8. CANO CORREA, Jhon Eidelber (a.k.a. Cano, Jhonny; a.k.a. ''Flechas''; a.k.a. CARDONA RIBILLAS, Alejandro); Carrera 28 No. 7–35, Cali, Colombia; Calle 18 No. 8–16, Cartago, Valle, Colombia; DOB 13 Dec 1963; POB El Aguila, Valle, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 16217170 (Colombia); Passport AF133955 (Colombia); Passport AC877214 (Colombia); Cedula No. 16455750 (Colombia); (INDIVIDUAL) [SDNT]
9. GALLEGO CANO, Juan de la Cruz, c/o GAVIOTAS LTDA., Cartago, Valle, Colombia; Carrera 3 No. 6–39, El Aguila, Valle, Colombia; DOB 26 Feb 1956; POB El Aguila, Valle, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 6272570 (Colombia); Passport AF200504 (Colombia); (INDIVIDUAL) [SDNT]
10. GIRALDO FRANCO, Juan Carlos; Colombia; Calle 3 Oeste No. 26–12, El Aguila, Valle, Colombia; DOB 10 Jun 1971; Cedula No. 16791184 (Colombia); (INDIVIDUAL) [SDNT]
11. GOMEZ BUSTAMANTE, Luis Alfonso, c/o GAVIOTAS LTDA., Colombia; Calle 1B No. 1–26, Barrio El Prado, Cartago, Valle, Colombia; Carrera 5 No. 1–82, Obando, Valle, Colombia; DOB 01 Nov 1953; Passport 4451571 (Colombia); Cedula No. 4451571 (Colombia); (INDIVIDUAL) [SDNT]
12. GOMEZ BUSTAMANTE, Wilmer de Jesus, c/o GAVIOTAS LTDA., Cartago, Valle, Colombia; Calle 17A No. 8N–15, Cartago, Valle, Colombia; DOB 26 Jan 1970; POB Aguila, Valle; Cedula No. 16223940 (Colombia); Passport AH345442 (Colombia); Passport AF002565 (Colombia); (INDIVIDUAL) [SDNT]
13. GOMEZ OCAMPO, Davinson (a.k.a. ''Gordo''); c/o GOMEZ MARIN LTDA., Ansermanuevo, Valle, Colombia; Calle 16 No. 1–58, Cartago, Valle, Colombia; DOB 10 Jul 1960; Cedula No. 2470433 (Colombia); (INDIVIDUAL) [SDNT]
14. HERNANDEZ ARBOLEDA, Sandra Milena, c/o COMERCIALIZADORA DE CAFE DEL OCCIDENTE CODECAFE LTDA., Pereira, Risaralda, Colombia; c/o INVERSIONES MACARNIC PATINO Y CIA S.C.S., Pereira, Risaralda, Colombia; Cedula No. 42109136 (Colombia); (INDIVIDUAL) [SDNT]
15. PATINO RESTREPO, Carlos Arturo (a.k.a. ''Patemuro''; a.k.a. ''Pate Muro''); c/o COMERCIALIZADORA DE CAFE DEL OCCIDENTE CODECAFE LTDA., Colombia; c/o INVERSIONES MACARNIC PATINO Y CIA S.C.S., Pereira, Risaralda, Colombia; Calle 20 No. 6–30, Ofc. 1304, Pereira, Risaralda, Colombia; Carrera 8–21, Viterbo, Caldas, Colombia; DOB 27 Apr 1964; POB La Virginia, Risaralda, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 9991679 (Colombia); Passport 9991679 (Colombia); Passport AF186124 (Colombia); Passport AC455469 (Colombia); Passport PO69381 (Colombia); (INDIVIDUAL) [SDNT]
16. PATINO TORRES, Juan Carlos, c/o GAVIOTAS LTDA., Cartago, Valle,

Colombia; Carrera 5 No. 13–10 , Ofc. 204, Cartago, Valle, Colombia; DOB 26 Jun 1971; POB Cartago, Valle, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 10141042 (Colombia); Passport AG172869 (Colombia); (INDIVIDUAL) [SDNT]

17. RENDON RAMIREZ, Jose Aldemar (a.k.a. ''Mechas''); Carrera 9 No. 10–07, Cartago, Valle, Colombia; Carrera 26 No. 80–40, MZ 1, Casa 13, Pereira, Risaralda, Colombia; Carrera 13 No. 18–50, Cartago, Valle, Colombia; DOB 24 Jul 1950; POB Pereira; Cedula No. 16202349 (Colombia); Passport AF956905 (Colombia); Passport AE182792 (Colombia); (INDIVIDUAL) [SDNT]
18. RESTREPO CLAVIJO, Carlos Umberto (a.k.a. RESTREPO CLAVIJO, Carlos Huberto; a.k.a. RESTREPO CLAVIJO, Carlos Humberto); Calle 8 No. 4–47, Cartago, Valle, Colombia; Cedula No. 16205322 (Colombia); (INDIVIDUAL) [SDNT]
19. ROJAS FRANCO, Jaime, Colombia; DOB 24 Dec 1957; POB Cartago, Valle, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 16210083 (Colombia); (INDIVIDUAL) [SDNT]
20. SABOGAL ZULUAGA, Daniela, c/o ORLANDO SABOGAL ZULUAGA E HIJOS & CIA S EN C, Ansermanuevo, Valle, Colombia; Avenida 17A No. 19–27, Barrio San Jose, Cucuta, Norte de Santander, Colombia; Paseo 5 de Julio, Barrio Libertad, San Antonio, Tachira, Venezuela; Calle 30 No. 3B–45, La Campina, Pereira, Risaralda, Colombia; Calle 14 No. 30–153, Medellin, Antioquia, Colombia; DOB 19 Jul 1989; POB Cucuta, Norte de Santander, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 22012785 (Venezuela) issued: 19 Jul 2004 exp: Jul 2014; Cedula No. TI–89071954430 (Colombia); (INDIVIDUAL) [SDNT]
21. SABOGAL ZULUAGA, Felipe, c/o ORLANDO SABOGAL ZULUAGA E HIJOS & CIA S EN C, Ansermanuevo, Valle, Colombia; Carrera 3 No. 11–99, Ofc. 301, Cartago, Valle, Colombia; Avenida 17A No. 19–27, Barrio San Jose, Cucuta, Norte de Santander, Colombia; Paseo 5 de Julio, Barrio Libertad, San Antonio, Tachira, Venezuela; Calle 30 No. 3B–45, La Campina, Pereira, Risaralda, Colombia; Calle 14 No. 30–153, Medellin, Antioquia, Colombia; DOB 31 Jan 1992; POB Cucuta, Norte de Santander, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 22012787 (Venezuela) issued: 19 Jul 2004 exp: Jul 2014; Cedula No. TI–92013100049 (Colombia); (INDIVIDUAL) [SDNT]
22. SABOGAL ZULUAGA, Juliana, c/o ORLANDO SABOGAL ZULUAGA E HIJOS & CIA S EN C, Ansermanuevo, Valle, Colombia; Avenida 17A No. 19–27, Barrio San Jose, Cucuta, Norte de Santander, Colombia; Paseo 5 de Julio, Barrio Libertad, San Antonio, Tachira, Venezuela; Calle 30 No. 3B–45, La Campina, Pereira, Risaralda, Colombia; Calle 14 No. 30–153, Medellin, Antioquia, Colombia; DOB 28 Aug 1987; POB Cucuta, Norte de Santander, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 22012784 (Venezuela) issued: 19 Jul 2004 exp: Jul 2014; Cedula No. TI–87032853519 (Colombia); (INDIVIDUAL) [SDNT]
23. SABOGAL ZULUAGA, Orlando (a.k.a. Sabogal, Alberto; a.k.a. ''El Mono Sabogal''; a.k.a. ''Carequeso''; a.k.a. GUILLEN JIMENEZ, Carlos Alberto; a.k.a. CONTRERAS VIVAS, Juan Pablo; a.k.a. SALAZAR QUINTERO, Carlos Alberto); c/o ORLANDO SABOGAL ZULUAGA E HIJOS & CIA S EN C, Colombia; Calle 18 No. 5N–21, Apt. 302, Cartago, Colombia; Paseo 5 de Julio, Barrio Libertad, Municipio Bolivar, Tachira, Venezuela; Caracas, Venezuela; Paseo 5 de Julio, Barrio Libertad, San Antonio, Tachira, Venezuela; Calle 30 No. 3B–45, La Campina, Pereira, Risaralda, Colombia; Calle 14 No. 30–153, Medellin, Antioquia, Colombia; DOB 22 Feb 1966; Alt. DOB 16 Sep 1965; POB Toro, Valle; Cedula No. 18505378 (Colombia); Passport AE533626 (Colombia); Passport AG496255 (Colombia); Passport 18505378 (Colombia); Passport AC635727 (Colombia); Cedula No. 21171060 (Venezuela); Cedula No. 12773520 (Venezuela); Cedula No. 94318435 (Colombia); Cedula No. 94318435 (Colombia); (INDIVIDUAL) [SDNT]
24. ZULUAGA ALZATE, Diana Patricia, c/o ORLANDO SABOGAL ZULUAGA E HIJOS & CIA S EN C, Ansermanuevo, Valle, Colombia; Avenida 17A No. 19–27, Barrio San Jose, Cucuta, Norte de Santander, Colombia; Carrera 3 No. 11–99, Cartago, Valle, Colombia; Paseo 5 de Julio, Barrio Libertad, San Antonio, Tachira, Venezuela; Calle 14 No. 30–153, Medellin, Antioquia, Colombia; Calle 30 No. 3B–45, La Campina, Pereira, Risaralda, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 25246532 (Colombia); (INDIVIDUAL) [SDNT]

Dated: October 25, 2006.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E6–18279 Filed 10–30–06; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209835–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209835–86 (TD 8708), Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes (§ 1.902–1).

DATES: Written comments should be received on or before *January 2, 2007* to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes.

OMB Number: 1545–1458.

Regulation Project Number: Reg–209835–86 (formerly INTL–933–86).

Abstract: This regulation provides rules for computing foreign taxes deemed paid under Internal Revenue Code section 902. The regulation affects foreign corporations and their United

States corporate shareholders that own directly at least 10% of the voting stock of the foreign corporation.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 1118, Foreign Tax Credit-Corporations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–18206 Filed 10–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 2006.

Last name	First name	Middle name/ initials
LIN	KUANG-HSIANG.	
YANG	SHU-YUAN.	
NOWIK	HENRY.	
AOUAD	PHILIP.	
WEATHERFORD	REBECCA	T.
TREE	MOHINI	BERNADETTE.
CHAU	KAR	HON QUINTON.
TREE	EDWIN	LESLIE.
MARSH	JENNIFER	C.
GUNEY	IZZET	RIFAT.
CHRISTEN	LAMONT	UNNI.
BURGESS	GARY.	
LEUNG	RACHEL	HO FUNG.
KRAYEM	ELIE.	
TAYLOR	JONATHAN	HENRY.
TAVERAS	MANUEL	CAYENTO ROSAS.
CHO-YU	CHING.	
DE CHIZELLE	YANN	KUHN.
RANDOLPH	WALTER	L.
MITSON	DAVID	G.
PAPACHARALAMBOUS	STEPHEN.	
SEABROOK	VICTOR	MELVILLE.
ZHOU	ZHONGQUAN.	
VARGAS	GLORIA	LEAH.
BROCKLEBANK	MARCIA	EARLY.
SKERJ	PETER	F.
ROBERTSON	JOHN	GRAHAM.
SIN	MONIQUE	WING SHEUNG.
HIGURASHI	MAUMI.	
HIGURASHI	NORITAKE.	
KREUGER	JOHN.	
MULLIGAN	GEORGE	EUGENE.
WALSH	PAUL	MICHAEL.
MCILROY	JOSE.	
WONG	CHEUK-FAU.	
WROTEN SMEDVIG	ESTHER	MARIE.
DUMAS	BERNARD	J.
WITT	PETER	F.
RASTIGAR	ALI	REZA.
FOGG	SIGRID	KARIN.

Last name	First name	Middle name/ initials
CHOW	CHUNG	KAM.

Dated: October 5, 2006.

Angie Kaminski,

Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E6–18207 Filed 10–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 21, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, November 21, 2006 from 9 a.m. ET to 10 a.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1–888–912–1227 or 718–488–2085, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 20, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–18210 Filed 10–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 21, 2006 from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, November 21, 2006, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: October 20, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–18211 Filed 10–30–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 210

Tuesday, October 31, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AK72

Absence and Leave; SES Annual Leave

Correction

In rule document E6–17389 beginning on page 61633 in the issue of Thursday, October 19, 2006, make the following corrections:

(1) On page 61633, in the second column, in the second paragraph, in the last line, ''employee's grade'' should read ''employee's grade or pay level.''.

(2) On page 61634, in the first column, in the 14th line, ''performance appose of allowing a'' should read: ''performance appraisal system.

The purpose of allowing a''

[FR Doc. Z6–17389 Filed 10–30–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 31, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Fender's blue butterfly (Icaricia icarioides fenderi), Lupinus sulphureus ssp. kincaidii (Kincaid's lupine), and Erigeron decumbens var. decumbens (Willamette daisy); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Fender's blue butterfly (Icaricia icarioides fenderi), Lupinus sulphureus ssp. kincaidii (Kincaid's lupine), and Erigeron decumbens var. decumbens (Willamette daisy)

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 Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) pursuant to the Endangered Species Act of 1973, as amended (Act). Approximately 3,010 acres (ac) (1,218 hectares (ha)) for Fender's blue butterfly in Benton, Lane, Polk, and Yamhill Counties, Oregon; 585 ac (237 ha) for *L. sulphureus* ssp. *kincaidii* in Benton, Lane, Polk, and Yamhill Counties, Oregon, and Lewis County, Washington; and 718 ac (291 ha) for *E. decumbens* var. *decumbens* in Benton, Lane, Linn, Marion, and Polk Counties, Oregon, fall within the boundaries of the critical habitat designation.

DATES: This rule becomes effective on November 30, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Portland Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266 (telephone (503) 231–6179). The final rule, economic analysis, and map will also be available via the Internet at *http://www.fws.gov/oregonfwo/Species/ESA-Actions/WillValleyPage.asp.*

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Portland Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266 (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under ESA section 4(b)(2), there are significant limitations on the regulatory effect of critical habitat designation under ESA section 7(a)(2). In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

As of September 22, 2006, only 475 species, or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service.* In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designating critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a

defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs; the cost of preparation and publication of the designation; the analysis of the economic effects and the cost of requesting and responding to public comment; and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

In this rule, it is our intent to discuss only those topics directly relevant to the designation of critical habitat. For more information on the Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii,* and *Erigeron decumbens* var. *decumbens,* refer to the final listing rule published in the **Federal Register** on January 25, 2000 (65 FR 3875), or the proposed critical habitat rule published in the **Federal Register** on November 2, 2005 (70 FR 66492). Provided below is a general overview of the habitat requirements of Fender's blue butterfly, *L. sulphureus* ssp. *Kincaidii,* and *E. decumbens* var. *decumbens.*

These species occur in wet prairie, upland prairie, and oak savanna habitats (collectively referred to as prairie habitat) that were once more widely distributed across western Oregon and southwestern Washington (Clark 1996, p. 8; Schultz *et al.* 2003, p. 69; Wilson *et al.* 2003, p. 79). Prairie habitat has been reduced to less than one percent of pre-settlement distribution (Hammond and Wilson 1993, p. 2), making the ecosystem among the most endangered in the United States (Noss *et al.* 1995, p. 67). The decline in these habitats and their increased fragmentation have led to the decline of many native prairie plants and animals (Wilson 1998a, p. 2 and 1998b, p. 1). Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens* are among the rarest of the native species dependent on this unique habitat type and are known to co-occur within the boundaries of some remnant prairie locations.

Various descriptions of prairie habitats have been published over the years and they usually vary in their division of communities and the dominant species present in each community (Jackson 1996, p. 2). We describe two habitat types, wet prairie and upland prairie, and define these by describing the plant communities reported co-occurring with the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens.*

Upland prairie (including oak savanna) habitat occurs on well-drained soils and is characterized by a short grass stature dominated by native bunch grasses and forbs (Wilson 1998a, p. 2; Wilson *et al.* 2003, p. 79). Wet prairies are seasonally flooded ecosystems occurring on both poorly drained soil types and well-drained soils where shallow bedrock impedes drainage (Wilson 1998b, p. 1). Although wet prairie soils dry out during typical summer droughts, they have soils with hydric characteristics (*i.e.*, soils formed under conditions of water saturation, flooding, or ponding long enough to develop anaerobic conditions) that support facultative or obligate wetland plant species (Wilson 1998b, p. 1).

Fender's blue butterfly and Lupinus sulphureus ssp. kincaidii

The Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* populations primarily occur on early seral (one stage in a sequential progression) upland prairie habitat with plant species including but not limited to: *Achillea millefolium* (common yarrow), *Aster hallii* (Hall's aster), *Brodiaea congesta* (Brodiaea), *Bromus carinatus* (California brome), *Calochortus tolmiei* (Cat's ear, Tolmie star-tulip), *Carex tumulicola* (splitawn sedge), *Cirsium callilepis* (fewleaf thistle), *Danthonia californica* (California oatgrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (common woolly sunflower, Oregon sunshine), *Festuca californica* (California fescue), *Festuca roemeri* (Roemer's fescue), *Fragaria virginiana* (Virginia strawberry), *Geranium oreganum* (Oregon geranium), *Grindelia integrifolia* (gumweed), *Lomatium nudicaule* (barestemmed desert parsley), *Luzula campestris* (wood rush), *Prunella vulgaris* (common selfheal), *Sanicula crassicaulis* (Pacific blacksnakeroot), *Sidalcea virgata* (rose checkermallow and dwarf checkerbloom), *Silene hookeri* (Hooker's silene), and *Wyethia angustifolia* (California compassplant) (Wilson 1998b, pp. 2–7; Kaye *in litt.*a, p. 2). Many of these associated species are considered indicators for upland prairie habitat (Schultz *et al.* 2003, p. 65; Wilson *et al.* 2003, p. 79).

The Fender's blue butterfly habitat requirements include a larval host plant (*i.e.*, *Lupinus sulphureus* ssp. *kincaidii*, *L. arbustus* (spurred lupine), and *L. albicaulis* (sickle-keeled lupine), native forbs for adult nectar sources, and native grasses that comprise short-grass upland prairies (Wilson *et al.* 1997, p. 3; Schultz 2001, p. 1008). These requirements are considered essential to the survival and conservation of these species (Wilson *et al.* 2003, p. 79). *Lupinus sulphureus* ssp. *kincaidii* is a primary larval host plant for the Fender's blue butterfly and is utilized by the butterfly for oviposition (laying eggs) and as a larval food source (Schultz *et al.* 2003, p. 64; Wilson *et al.* 2003, pp. 73, 77). Adult Fender's blue butterflies use nectar sources in wet prairie habitat that occur near their host plant habitat. The Fender's blue butterfly is more vigorous in full sun conditions (Schultz *et al.* 2003, p. 68), which are important for adult butterflies to seek out nectar, search for a mate, oviposit, and disperse (Severns in prep. Manuscript, pp. 1, 3, 13–19). The Fender's blue butterfly appears to have limited dispersal ability, with most dispersing adults likely remaining within approximately 1.2 miles (mi) (2 kilometers (km)) of their natal lupine patch (Schultz 1998, p. 284). The maximum dispersal distance reported for the Fender's blue butterfly is 2 mi (3.2 km) (Severns 2004, p. 4).

Lupinus sulphureus ssp. *kincaidii* habitat is generally described as prairie or open areas, and this species is typically unable to survive prolonged periods of shade (Wilson *et al.* 2003, p. 79). However, populations of *L. sulphureus* ssp. *kincaidii* occurring in Douglas County, Oregon, have been documented as occurring in atypical habitat for the species (Barnes 2004, p. 102). The Douglas County populations are in wooded areas with canopy cover ranging from 50 to 80 percent (Barnes 2004, p. 102) and dominated by species such as: *Arbutus menziesii* (Pacific madrone), *Arctostaphylos columbiana* (hairy manzanita), *Calocedrus decurrens* (incense cedar), *Calochortus tolmiei* (Cat's ear, Tolmie star-tulip), *Canadanthus modestus* (giant mountain aster), *Ceanothus cuneatusa* (buckbrush), *Cerastium arvense* (field chickweed), *Cynosurus echinatus* (bristly dogstail grass), *Daucus carota* (Queen Anne's Lace, wild carrot), *Dichelostemma capitatum* (bluedicks), *Festuca californica* (California fescue),

Festuca roemeri (Roemer's fescue), *Fragaria vesca* (woodland strawberry), *Hieracium albiflorum* (white hawkweed), *Holodiscus discolor* (oceanspray), *Lathyrus polyphyllus* (leafy pea), *Lonicera hispidula* (pink honeysuckle), *Pinus ponderosa* (ponderosa pine), *Pseudotsuga menziesii* (Douglas fir, Doug fir), *Quercus kelloggii* (California black oak), *Rubus ursinus* (California blackberry), *Sanicula crassicaulis* (Pacific blacksnakeroot), *Symphoricarpos albus* (snowberry), *Torilis arvensis* (spreading hedgeparsley), *Toxicodendron diversilobum* (poison oak), *Vicia americana* (American vetch), and *Whipplea modesta* (common whipplea) (Friedman *in litt.*a, p.1; Friedman *in litt.*b, p.1).

Lupinus sulphureus ssp. *kincaidii* is a low-growing herbaceous perennial with large individual plant clones (Wilson *et al.* 2003, p. 73). Excavation efforts indicate that above-ground vegetation 33 feet (10 m) or more apart can be interconnected by below-ground stems. The species is long-lived with lateral growth rates, suggesting that some plants could be several decades old (Wilson *et al.* 2003, p. 73). *Lupinus sulphureus* ssp. *kincaidii* clones are scattered in patches across the prairie habitat and intermixed with several other prairie-associated plant species. *Lupinus sulphureus* ssp. *kincaidii* is a primary larval host plant for the Fender's blue butterfly and is utilized by the butterfly for oviposition (laying eggs) and as a larval food source (Schultz *et al.* 2003, p. 64; Wilson *et al.* 2003, pp. 73, 77).

Erigeron decumbens var. decumbens

Erigeron decumbens var. *decumbens* grows in wet prairies occurring on relatively impermeable soils. Wet prairie habitat supporting *Erigeron decumbens* var. *decumbens* is typically defined by the plant species co-occurring with the plant including, but not limited to: *Anthoxanthum odoratum* (sweet vernalgrass), *Aster curtus* (white-top aster), *Aster hallii* (Hall's aster), *Brodiaea coronaria* (crown brodiaea), Camassia quamash (common camas), *Danthonia californica* (California oatgrass), *Deschampsia caespitosa* (tufted hairgrass), *Festuca arundinacea* (tall fescue), *Grindelia integrifolia* (gumweed), *Holcus lanatus* (velvet grass), *Horkelia congesta* (Sierra horkelia), *Saxifraga integrifolia* (bog saxifrage), *Lomatium bradshawii* (Bradshaw's lomatium), *Luzula campestris* (wood rush), *Panicum capillare* (witchgrass), *Potentilla gracilis* (slender cinquefoil), *Prunella vulgaris* (common selfheal) and *Sisyrinchium angustifolium* (narrowleaf blue-eyed grass) (Clark *et al.* 1993, p. 18; Clark *et al.* 1995a, p. 1, 1995b, p. 1; Jackson 1996, p. 14; Clark 2000, p. 3). *Erigeron decumbens* var. *decumbens* also grows in upland prairies as previously described (Clark *et al.* 1993, p. 18; Clark *et al.* 1995a, p. 1; Jackson 1996, p. 18; Clark 2000, p. 3).

Erigeron decumbens var. *decumbens* typically occurs where woody cover is nearly absent and where herbaceous vegetation cover is low in stature relative to the surrounding areas (Clark *et al.* 1993, pp. 21, 22). *Erigeron decumbens* var. *decumbens* is a low-growing (6–24 inches (in) (15–60 centimeters (cm))) herbaceous perennial occurring in clumps of genetically identical ramets (*i.e.*, a vegetatively reproduced copy of the parent plant) that are typically patchy in distribution across the prairie habitat (Clark *et al.* 1993, p. 23). These plants are intermixed with several associated species which are considered indicator species for the prairie habitat (Clark *et al.* 1993, p. 18).

Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens* populations historically functioned as metapopulations in the more widespread prairie habitat (Jackson 1996, p. 20; Liston *et al.* 1995, p. 318; Schultz 1998, p. 285; and Severns 2003a, p. 221). Currently, most populations of these species are isolated from neighboring populations, and interactions between populations are thought to be rare events (Jackson 1996, p. 6; Schultz 1998, p. 286; Severns 2003a, p. 222). Recovery will require reestablishing connected populations by restoring habitat networks (Kaye, *in litt.*b, 2005, p. 1; Schultz *et al.* 2003, p. 61; Severns 2003a, p. 227). In this document, we define ''habitat networks'' as prairie habitat that can support connected populations and function as metapopulations.

Previous Federal Actions

On April 23, 2003, a complaint was filed against the Service (CV 03 513 JE (D. Or.)) for failure to designate critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens*. In December 2003, a settlement agreement resulted in a schedule for the Service to submit a proposed critical habitat rule to the **Federal Register** by October 15, 2005, and a final rule by October 15, 2006.

On November 2, 2005, a proposed rule to designate critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens* was published in the **Federal Register** (70 FR 66492). The initial comment period closed on January 3, 2006. On April 21, 2006, we published a notice in the **Federal Register** announcing the reopening of the comment period and the public hearing for the proposed critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens* (71 FR 20636). On June 15, 2006, we published a notice in the **Federal Register** announcing the availability of the draft economic analysis of the proposed designation of critical habitat for these species and a reopening of the public comment period (71 FR 34566). The third public comment period closed on June 30, 2006. For more information on previous Federal actions concerning Fender's blue butterfly, *L. sulphureus* ssp. *Kincaidii*, and *E. decumbens* var. *decumbens* refer to the November 2, 2005, proposed rule (70 FR 66492).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens* in the proposed rule published on November 2, 2005 (70 FR 66492). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. In addition, we held a public hearing on May 9, 2006, in Corvallis, Oregon. No comments were received during the public hearing.

During the comment period that opened on November 2, 2005, and closed on January 3, 2006, we received 72 comments directly addressing the proposed critical habitat designation: 5 from peer reviewers, 3 from Federal agencies, and 64 from organizations or individuals. During the comment period that opened on April 21, 2006, and closed on May 19, 2006, we received an additional 11 comments directly addressing the proposed critical habitat designation: one from a peer reviewer, one from a Federal agency, and nine from organizations or individuals. During the comment period that opened on June 15, 2006, and closed on June 30, 2006, we received 12 comments directly addressing the proposed critical habitat designation and the draft economic analysis. Of these latter comments, one was from a peer reviewer and 11 were from organizations or individuals. The received comments were grouped into

six general categories specifically relating to the proposed critical habitat designation or draft economic analysis for Fender's blue butterfly, *L. sulphureus* ssp. *Kincaidii*, and *E. decumbens* var. *decumbens.* The comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eight knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occur, and conservation biology principles. Five of the eight peer reviewers responded. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens.* Peer review comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review Comments Related to Life History, Habitat Characteristics, and Ecological Considerations

1. *Comment:* During the 2005 field season, one peer reviewer reported finding a Fender's blue butterfly population that has become successfully established at the Deer Creek County Park in Yamhill County within a large patch of *Lupinus sulphureus* ssp. *Kincaidii*, and has been growing and expanding rapidly over the past few years. The peer reviewer recommended adding this site to the critical habitat designation in association with the Gopher Valley metapopulation since the site is only 1 mile (1.6 kilometers) south of units FBB–2 and KL–3.

Our Response: At the time we proposed critical habitat, the best scientific information available identified 0.2 acre (ac) (0.1 hectare (ha)) of *Lupinus sulphureus* ssp. *kincaidii* habitat occuring in Deer Creek County Park. We did not have information describing available surrounding prairie habitat; therefore, it did not meet our criteria at the time of our proposal. We have been unable to verify that these sites meet our criteria.

2. *Comment:* One peer reviewer recommended deleting the critical habitat unit on Monmouth Highway (FBB–6B) within unit FBB–6 in Polk County. This peer reviewer stated that this Fender's blue butterfly population is located on a disturbed agricultural field, which has been replanted with young conifer trees. The reviewer believes that eventually the trees will out-compete the existing lupine species and eliminate the butterfly from the site.

Our Response: FBB–6B meets our criteria for inclusion because it is the largest known population of Fender's blue butterfly in this portion of the species' range and contains primary constituent elements essential to the conservation of the species. We do not know the extent of tree planting on the site or how much habitat may be affected; however the site does provide PCEs despite the fact it has been planted to some degree. Other sites that were planted with young conifers for commercial Christmas tree farms in the early 1990's still support butterflies with recently reported increasing populations. Periodic Christmas tree harvest may act as a disturbance that opens the habitat and allows the lupine to spread back into these areas with butterfly populations increasing in response to the additional available habitat. These are disturbance dependent species. Since butterfly numbers at this site have been estimated at substantially higher numbers from 2003 to 2005, we feel that this site should remain in the designation. During the development of the proposed rule, another peer reviewer stated that this site could serve as an important stepping-stone habitat (*see* Schultz 1998, p. 291) and enhance the genetic exchange among Fender's blue butterfly populations at other sites. Additionally, FBB–6A provides *Lupinus sulphureus* ssp. *kincaidii* habitat within the butterfly's average dispersal distance, which may serve as a stepping stone between FBB–6 and FBB–5. This unit has the features that are essential to the conservation of the butterfly and is, therefore, included in this final designation.

3. *Comment:* One peer reviewer recommended that the maximum dispersal distance for Fender's blue butterfly be changed to 1.9 mi (3.0 km) based on an observed colonization event.

Our Response: We are using a Fender's blue butterfly average adult lifetime movement distance of 1.2 mi (2 km) based on a behavioral study by Schultz (1998, pp. 287–290). We acknowledge that the Fender's blue butterfly is capable of moving greater distances, but data with which to determine how frequently such movements may occur is currently lacking. Therefore, based on the above study, we retained the use of the 1.2 mi (2 km) distance as a more typical and conservative estimate of adult butterfly movement.

4. *Comment:* One peer reviewer wanted us to clarify actions that would further isolate populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* as discussed under Section 7 Consultation in the proposed rule. The peer reviewer stated that current habitats for these species are essentially isolated and data for the two plants species are unavailable to determine how the listed actions would cause further isolation, especially associated with pollinator travel and seed dispersal distances.

Our Response: In the proposed rule, we stated that if critical habitat units for the plants are located more than 5 mi (8 km) apart, or if critical habitat units for Fender's blue butterfly are located more than 1.2 mi (2 km) apart, then actions in the areas separating the units would not be considered to further isolate the species.

5. Comment: One peer reviewer stated that we should include the pollinators for *Erigeron decumbens* var. *decumbens* as a primary constituent element similar to what we did for *Lupinus sulphureus* ssp. *kincaidii.*

Our Response: There is very little data that has been published or reported in the literature on this species, including requirements for reproduction. Although insect pollination has been documented as facilitating sexual reproduction, it has not been reported as essential to the reproduction of *Erigeron decumbens* var. *decumbens.* Therefore, because we were not able to determine the specific pollinator essential to the conservation of the species, we did not include the presence of insect outcrossing pollinators as a primary constituent element for the species.

Comments From the Public Related to Life History, Habitat Characteristics, and Ecological Considerations

6. *Comment:* An increase in urbanization within the West Eugene area could create barriers to dispersal for the Fender's blue butterfly between core and satellite areas.

Our Response: We agree that increased urbanization may have direct and indirect effects (*e.g.*, mortality from vehicle collisions and increased habitat loss) on Fender's blue butterfly dispersal, but specific scientific studies addressing the effects of urbanization on Fender's blue butterfly dispersal are not available. We will evaluate potential

future impacts to the designated critical habitat on specific projects through the section 7 consultation process.

7. *Comment:* A number of commenters stated that the effects of climate variability, natural flooding, and water management are not taken into consideration in the designation. Specifically, these events may result in hydrologic changes; accordingly, the critical habitat designation should cover a broader range of topographic elevation. Specific recommendations were made to include additional habitat for *Erigeron decumbens* var. *decumbens* to address a variety of concerns, such as elevation, topography, and slope.

Our Response: While we agree that climate variability could play a role in future distributions of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*, we are not aware of scientific information that specifically addresses the effects of these events on these species or how to modify the designation to address these potential threats. We worked with local land managers and scientific experts to identify the extent of prairie habitat that supported *E. decumbens* var. *decumbens* populations, and that also met our criteria for designation.

8. *Comment:* Forest succession between core populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* could create smaller genetically isolated populations that would put them at a greater risk of local extirpation from the lack of genetic diversity. To address this concern, the commenter recommended designating lupine patches for butterfly core areas with recovery management criteria to reduce intervening forest or ensure open prairie corridors are available through the forest. Additionally, the commenter was concerned about the uncertainty of lake bays as barriers to butterfly dispersal.

Our Response: Gene flow among populations of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* could be partially or completely restricted depending on the degree of intervening forest and the size of a given lake bay. The commenter cited a personal communication with peer reviewer Paul Severns, documenting Severns' observation of Fender's blue butterflies flying over tall oak trees, which further shows the uncertainty of this potential risk. To our knowledge, there are no currently available scientific studies that have been completed for these species to further our understanding of this potential gene flow issue. For the Fender's blue butterfly, McIntire *et al.* (2006, p. 27) states that they do not know butterfly response to barriers such as woodlands, light industrial development, and roads. Therefore, they do not know the effects these elements may have on dispersal. McIntire *et al.* (2006, p. 27) notes that if elements such as woodlands or topography change butterfly movement or mortality, then connectivity would likely be affected. For these reasons, researchers are currently undertaking field studies to estimate these potential effects. However, as these studies are not yet complete, we cannot rely on them for this designation.

9. *Comment:* The proposed critical habitat stated that land within the Willamette Valley was ''subjected to fire suppression,'' which assumes that naturally occurring fires routinely burned in the valley and were suppressed by humans. To the contrary, the commenter believes that Native Americans converted the valley to agricultural lands when they began routinely burning to enhance the growth of harvestable food crops. This commenter stated that without human intervention, Fender's blue butterfly habitat would not have existed to any great extent and wanted to know what scientific evidence is available to prove that the butterfly was once more widely distributed in the Willamette Valley.

Our Response: Based on information in the final listing rule for the Fender's blue butterfly (65 FR 3875), the precise historic distribution of the butterfly is unknown due to limited information collected on this species prior to its description in 1931. However, early records indicate that before European settlement, the landscape of the Willamette Valley was largely an open expanse of prairie and savannah habitat (Altman *et al.* 2001, p. 262; Franklin and Dyrness 1973, p. 119). Given the greater amount of upland prairie patches, we assumed that the butterfly and *Lupinus sulphureus* ssp. *kincaidii* were also more widely distributed (Schultz 1998, p. 290–291; Wilson *et al.* 2003, p. 79). However, as stated previously, we do not know the historic distribution of these species, and it is possible that distribution was always patchy. This assumption is independent of whether prairie habitats were created or maintained under natural or human-induced conditions.

Comments From the Public Related to Critical Habitat, Primary Constituent Elements, and Methodology

10. *Comment:* Several commenters recommended that we designate multiple stepping-stone pathways for Fender's blue butterflies to ensure connectivity among critical habitat units and that we designate additional large core areas to ensure that some of the areas achieve stable butterfly populations. Additionally, commenters were concerned about the habitat condition of specific units designated in West Eugene. One commenter suggested specific sites for inclusion in West Eugene to address the following concerns: Stepping-stone redundancy, climatic variability, connectivity, elevation diversity, and population expansion. The commenters also suggested using a rule set for selecting habitats based on fine scale sub-watersheds.

Our Response: We used the best available scientific information and included occupied Fender's blue butterfly habitat identified as having the features that are essential for re-establishing a viable, connected metapopulation in the Eugene, Oregon area (McIntire *et al.* 2006, in review, pp. 20–22). Although we recognize that additional habitat may further contribute to recovery, our best available information (McIntire *et al.* 2006, in review, p. 20–22) does not identify the commenter's suggested areas as appropriate for designation as critical habitat for the Fender's blue butterfly. Outside of Eugene, Oregon, the best available information is not sufficient to identify stepping-stone pathways, thus, none were designated. Additional *Lupinus sulphureus* ssp. *kincaidii* habitat will likely be needed for recovery; however, we are unaware of any additional lupine patches that meet the minimum patch size within the pollinator distance criteria. The best available scientific information (Gisler *et al., in litt.,* 2005, pp. 4, 5) defines criteria without regard to sub-watershed.

11. *Comment:* Several commenters stated that designated *Lupinus sulphureus* ssp. *kincaidii* patches should be closer together (1.2 mi (2 km)) to allow for more frequent cross-pollination between patches by native pollinators.

Our Response: We included occupied *Lupinus sulphureus* ssp. *kincaidii* sites that are within 5 mi (8 km) (based on the maximum flight distance of the non-native honeybee) of a lupine core area and that met our minimum patch size of 0.25 ac (0.1 ha). By using the 5 mi (8 km) distance, we included lupine patches that are within 1.2 mi (2 km) of each other.

12. *Comment:* We failed to designate sufficient critical habitat that would provide *Lupinus sulphureus* ssp.

kincaidii the ability to colonize other areas, especially in response to threats from predation, parasites, and invasive plant species. One of the commenters made specific recommendations for the inclusion of unoccupied and occupied *L. sulphureus* ssp. *kincaidii* patches in the critical habitat designation to allow for increased lupine succession, regeneration, population stabilization, topographic relief, and improved pollination.

Our Response: We included the prairie habitat occupied by *Lupinus sulphureus* ssp. *kincaidii* that met our selection criteria and believe that we have provided for the concerns listed in the comment. We agree that additional areas not included in this designation that did not meet our selection criteria for critical habitat may also be needed to recover the species. However, information currently available does not suggest that these specific areas have the features that are essential to the conservation of the species.

13. *Comment:* No apparent biological reason exists for gaps between critical habitat units in the narrow waterway corridors for the Fender's blue butterfly in Eugene, Oregon. This commenter and eight others made recommendations for the inclusion of additional Fender's blue butterfly areas in the West Eugene area to address this issue and provide for species recovery.

Our Response: We did not include waterways between critical habitat units because the distance between lupine patches supporting Fender's blue butterflies exceeded the 1.2-m (2 km) average adult butterfly movement distance (Schultz 1998, pp. 288–290). Each unit includes all populations that are believed to be connected and functioning as a larger metapopulation given the current landscape. Schultz (1998, p. 291) documented that stepping-stones would be more beneficial to the butterfly than corridors, and McIntire *et al.* (2006, in review, pp. 20–22) identified necessary butterfly stepping-stone habitat in Eugene, Oregon. Refer to the Summary of Changes from Proposed Rule section in this rule for more information on changes to the critical habitat designation for the butterfly.

14. *Comment:* The inclusion of an additional habitat patch to unit KL–12B would allow for a more stable population of smaller *Lupinus sulphureus* ssp. *kincaidii* patches along the Amazon Channel. The U.S. Army Corps of Engineers (Corps) recommended including specific occupied sites they manage for *L. sulphureus* ssp. *kincaidii*.

Our Response: We have not had enough time to evaluate all of the information regarding potential critical habitat sites that we received during the public comment periods to determine if these sites meet our criteria.

15. *Comment:* The Eugene District of the Bureau of Land Managemnt (BLM) recommended including two newly discovered (June 2005) sites for Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* within their District's upper Willamette resource area (Oak Basin).

Our Response: We appreciate the BLMs' recognition of the value of these sites; however, they did not meet our criteria for selection.

16. *Comment:* Several commenters stated that the proposed critical habitat designation for the Fender's blue butterfly or *Lupinus sulphureus* ssp. *kincaidii* included areas that overrepresent the extent of the habitat for these species.

Our Response: We revised the critical habitat boundaries, as appropriate, based on information received during the comment period. Prairie habitat that contains one or more of the Fender's blue butterfly primary constituent elements within 1.2 mi (2 km) of a butterfly population is considered occupied by the butterfly. Contiguous prairie habitat surrounding known populations of *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* is also considered occupied if it contained one or more of the species-specific primary constituent elements (*see* the Primary Constituent Elements and Criteria Used To Identify Critical Habitat sections).

17. *Comment:* We erroneously excluded areas of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens,* including historic sites that are no longer extant, from the critical habitat designation. Additionally, the Army Corp of Engineers recommended including potential habitat sites they manage for *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens.*

Our Response: We recognize that areas outside of this designation will contribute to the recovery of *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* and appreciate the Army Corp of Engineers' on-going efforts to manage for the species. However, not all sites that historically supported these species are considered to have the features that are essential to the conservation of the species. Some sites did not meet our criteria to be included in the final designation.

18. *Comment:* The Roseburg District of the BLM stated that the atypical habitat conditions where *Lupinus sulphureus* ssp. *kincaidii* occurs in Douglas County is described inconsistently with regard to the shade tolerance of the species, and that the first lupine primary constituent element does not apply in Douglas County.

Our Response: We agree, and have clarified the information in the Background, Primary Constituent Elements, and Criteria Used To Identify Critical Habitat sections of this rule to address BLM's concerns associated with the atypical habitat conditions for *Lupinus sulphureus* ssp. *kincaidii* in Douglas County. Individual critical habitat units for *L. sulphureus* ssp. *kincaidii* do not have to contain all of the species-specific primary constituent elements, but must contain at least one of the primary constituent elements to support a portion of the species' life history. The second primary constituent element for *L. sulphureus* ssp. *kincaidii* is associated with the critical habitat designation in Douglas County. We proposed critical habitat in Douglas County using the same criteria as in other areas, with the addition of atypical habitat conditions found in the county. Refer to the Primary Constituent Elements and Criteria Used To Identify Critical Habitat sections in this rule for more information on how we defined the critical habitat criteria for *L. sulphureus* ssp. *kincaidii*.

19. *Comment:* The proposed critical habitat rule, including primary constituent elements, is too narrowly focused to protect the habitat essential for the long-term survival and recovery of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens.* In addition, the designation should include low quality areas.

Our Response: Most populations of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* have not been studied adequately to determine how best to restore functioning metapopulations in the highly fragmented prairie habitats within the Willamette Valley. We used the best available scientific information to determine primary constituent elements and critical habitat criteria for each species. We recognize that critical habitat designations, based on the species' primary constituent elements and other criteria, may not include all areas that may be necessary for species recovery. Future research and recovery planning will likely identify other areas that will aid in recovery. We only included areas of sufficient quality that

are able to sustain the species and have the features that are essential to the conservation of the species. (*see* the Criteria Used To Identify Critical Habitat section).

Comments From the Public Related to the Act and Implementing Regulations

20. *Comment:* The City of Eugene's West Eugene Wetlands Plan and Bureau of Land Management's West Eugene Wetlands Restoration Schedule do not include the level of special management considerations and protections provided under a critical habitat designation, and it would be inappropriate to exclude any area covered under these plans that would otherwise qualify as critical habitat.

Our Response: We agree, while the City of Eugene's West Eugene Wetlands Plan and Bureau of Land Management's West Eugene Wetlands Restoration Schedule include general planning schedules for the area, they did not provide the specificity of management that we needed to evaluate under our section 4(b)(2) process. As these and other planning efforts progress, we will work with involved entities to address the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens.* If we revise critical habitat in the future, we will revaluate the status of planning efforts.

21. *Comment:* The Eugene District of the BLM requested that we consider (1) exempting all BLM-administered lands within the West Eugene Wetlands from the final critical habitat rule, or (2) exempting all actions under their 10-year schedule for restoration from further section 7 consultation on effects to critical habitat designations for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens.*

Our Response: Biological opinions resulting from a consultation are not in and of themselves a basis for exclusion. However, management plans that commit to specific appropriate management criteria, whether associated with a biological opinion or not, are considered for exclusion. We do not anticipate that further minimization measures on the West Eugene Wetlands Schedule Environmental Assessment (No. OR090–EA–05–03) will be required due to this final rule.

22. *Comment:* The Eugene District of the BLM stated that the development of a wetland education center is planned for the Danebo site. BLM and several other commenters believe that the positive effects of public education on the values and vulnerability of wetland species outweigh the benefits of designating critical habitat at this site.

Our Response: We agree that public outreach and voluntary conservation on wetlands and associated species in West Eugene is important. However, we have not been provided any project documention associated with a potential education center and are unable to assess whether the area has conservation in place that is comparable to designation as critical habitat.

23. *Comment:* Several commenters stated that they are willing to voluntarily manage the habitat on their property for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*, but do not want to be included in the critical habitat designation because of increased regulatory burdens. Some commenters specifically suggested not designating private agricultural lands, and requested a description of proper prairie habitat management to understand how it would affect agricultural operations.

Our Response: We support and appreciate the efforts that are being made by organizations and individuals to conserve listed species on their lands. When undertaking the process of designating critical habitat for a species, we evaluate lands defined by physical and biological features essential to the conservation of the species without regard to land ownership or land use. We will gladly evaluate conservation plans and efforts to determine if areas can be excluded because conservation is in place. At the time of this rule, we did not have conservation plans or other documents that would allow us to assess the adequacy of conservation on these specific lands. For a general description of proper management of prairie habitat, refer to the Special Management Considerations or Protections section of this rule. The specifics of management can vary from site to site, and we offer technical assistance to landowners in establishing management plans for conserving species.

24. *Comment:* Commenters disagree with our statement that ''the designation of statutory critical habitat provides little additional protection to most listed species.'' Commenters also note several court decisions that have invalidated this position, which violates Congressional intent and the plain language of the Endangered Species Act.

Our Response: In most cases, conservation mechanisms provided through section 7 consultations, section 4 recovery planning process, section 9 protective prohibitions of unauthorized take, section 6 funding to the States, section 10 incidental take permits, and cooperative programs with private and public landholders and tribal nations provide greater incentives and conservation benefits than designation of critical habitat.

25. *Comment:* The City of Eugene identified several conservation accomplishments achieved through implementation of the West Eugene Wetlands Plan, including the outgrowth of the West Eugene Wetlands Partnership. The City provided suggestions for reducing the regulatory requirements associated with critical habitat designation on their property in order to increase their ability to effectively manage their lands.

Our Response: We agree that the City of Eugene and its partners have significantly contributed to wetland conservation through the implementation of their wetland mitigation plan. The mitigation plan, however, is not specifically designed to protect and manage habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*, and does not provide the specific management details needed to meet our section 4(b)(2) requirements.

Comments From States Related to Critical Habitat, Primary Constituent Elements, and Methodology

26. *Comment:* The Washington Department of Natural Resources (WDNR) recommended that the Lewis County, Washington *Lupinus sulphureus* ssp. *kincaidii* parcels be excluded from the critical habitat designation. WDNR believes that the willingness of landowners to cooperate with the WDNR on species conservation may be negatively affected if landowners view the designation as a restriction on their ability to use the land.

Our Response: We are excluding unit KL–1A from critical habitat designation based on the *Lupinus sulphureus* ssp. *kincaidii* conservation provisions documented in the landowner's management plan with U.S. Department of Agriculture Natural Resources Conservation Service. For more information, see the ''Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'' section of the rule. Unit KL–1B is not eligible for exclusion because there is no current management or conservation plan for the species or the features essential to its conservation at this site.

Comments Related to Economic Analysis; and Other Relevant Impacts

27. *Comment:* We received a comment stating that the draft economic analysis does not consider the impact of critical habitat designation on the conservation market (*i.e.*, the supply, demand, and exchange of habitat through decisions by buyers and sellers); that designating critical habitat removes both the option for development and the appeal of the area for potential conservation land. The commenter believes the draft economic analysis only quantifies the former cost, and not the latter.

Our Response: If landowners forgo the development of their land to conserve the habitat, their value for conservation is equal to or greater than the value of the development opportunity. The draft economic analysis measured this opportunity cost. The cost of acquiring conservation easements is captured in Section 4.0, which includes estimates of the cost of land use restrictions imposed on landowners by conservation efforts associated with the species. The lost land value (*i.e.*, growth premium and option value) calculated in Section 4.0 represents the underlying value of conservation easements that could be purchased in order to remove the development opportunity from the land and to protect the habitat. This same concept applies if the land is sold for conservation purposes (presumably at some market price). The market price for conservation would be set by the highest valued use for the land. The extent that critical habitat designation reduces the appeal of an area for potential conservation land, and results in a reduction in land value beyond the option for development measured by the draft economic analysis, is understated in the draft economic analysis. However, no evidence was provided indicating that critical habitat designation makes land less attractive for conservation.

28. *Comment:* We should include the value of ecosystems in analyzing economic issues associated with the designation of critical habitat designations.

Our Response: We recognize that the various functions of an ecosystem have value, but we are unable to meaningfully place an economic value on the biological attributes that function to make a viable ecosystem. The benefits of critical habitat are best expressed in biological terms, *e.g.*, the conservation benefit provided to a species, which can then be weighed against the expected economic impacts of the rulemaking. The purpose of a critical habitat economic analysis is to assist the Secretary in deciding whether the benefits of exclusion outweigh the benefits of inclusion, and if areas should be excluded under section 4(b)(2) of the Act. We may not be able to quantitatively account for the value of ecosystems in analyzing economic issues related to the designation of critical habitat, but we have done so qualitatively in a manner that supports the Secretary's exclusion analysis through the 4(b)(2) process.

29. *Comment:* The economic analysis can not reasonably weigh the biological benefits of critical habitat designation without weighing its biological costs, such as habitat losses brought on as a result of the landowners' beliefs that they have disincentives to maintain the habitat. The economic analysis dismisses these biological costs as rare, but the commenter believes they are potentially substantial.

Our Response: In the proposed rule and draft economic analysis, we indicated that we did not expect the designation of critical habitat to provide significant additional regulatory or economic burdens or restrictions beyond those afforded the species pursuant to the Act. This assertion is based on the regulatory protections afforded to Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* as a result of their existing listed status, and the protections that status affords. Since all the lands designated as critical habitat are already occupied by one or more of species, there is little additional regulatory burden placed on private landowners.

30. *Comment:* Other commenters stated the draft economic analysis does not assess the potential impacts to them as landowners if a vintner is discouraged from leasing or they are discouraged from developing a vineyard on their land in Polk County due to the critical habitat designation.

Our Response: As described in Section 4.1 of the draft economic analysis, if development of a parcel of agriculture land is restricted, it will be worth less than its value in the previously unrestricted state. This loss of value is a cost to the landowner; with the magnitude of loss depending on the type of land use restriction imposed. Specifically, if a piece of land is restricted from any kind of use, all of its economic value will be lost. Based on recent sales transactions obtained from Farm Credit Services of agriculture land similar to the proposed critical habitat in Polk County (*i.e.*, 49 sales during the period 2000 to 2005), a complete loss of economic value to the commenter's land in Polk County could approach $8,000 per acre.

However, as stated in Section 4.0 of the draft economic analysis, this analysis assumes the agriculture use of privately owned land will be unrestricted, and the draft economic analysis only presents economic impacts to the commenter's land related to the loss of development opportunity. In this case, the development impact measured in the draft economic analysis is nearly $6,600 per acre, 93 percent of their estimated land value. If a vineyard opportunity is restricted on private property in order to conserve species, there may be an additional loss in property value above that quantified in the draft economic analysis.

31. *Comment:* The draft economic analysis does not calculate the lost farm and forest values associated with land development. Development destroys the farm or forest potential, eliminating a stream of economic benefits. This income and benefit stream is associated with land conservation and should be included among the economic benefits of critical habitat designation.

Our Response: As described in Section 4.0 of the of the draft economic analysis, the existing agricultural use of the private land within the proposed critical habitat designation is assumed to remain unrestricted. While critical habitat designation may restrict development opportunities, depending on the existence of a Federal nexus, the ongoing use of the land for farming and forestry is expected to continue, is embedded in the land value, and is included in the economic analysis.

32. *Comment:* The economic cost of recovering very small populations or populations that lack adequate habitat will be significantly greater than the cost of recovering populations with adequate habitat. Conserving rare plant species through the designation of critical habitat will also conserve other species. The effort to recover rare species should be considered when performing an economic analysis pursuant to the designation of critical habitat.

Our Response: The economic costs of future recovery actions for species not addressed in the designation are independent of the economic impacts caused by the critical habitat designation, which is the focus of this economic analysis. It would be inappropriate for us to speculate on how an unknown suite of future recovery actions for other species might be made more or less costly as a result of the designation.

33. *Comment:* The economic analysis exaggerated the economic costs of the

critical habitat designation through sheer speculation.

Our Response: To ensure that all possible potential economic impacts were given adequate consideration, we contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in several local newspapers. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed or mailed to affected elected officials, local jurisdictions, and interest groups. We also published the draft economic analysis and associated material on our internet site (*http://www.fws.gov/oregonfwo/Species/ESA-Actions/WillValleyPage.asp*) following the draft's release on June 15, 2006. In addition to inviting public comment on the proposed designation, the later notices announced the dates and times of a public hearing on the proposed designation. Any economic impacts described in the draft economic analysis are a direct result of this extensive effort to collect data on the actual potential impacts. While some potential impacts are less likely than others, all impacts described result from following a consistent approach to gathering this information.

34. *Comment:* The economic analysis illegally attributed costs associated with the species listing to costs of critical habitat designation.

Our Response: The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for these three species. We interpret the Act to require that the economic analysis include all of the economic impacts associated with the conservation of the species, which may include some of the effects associated with listing. We note that the Act generally requires critical habitat to be designated at the time of listing, and if we had conducted an economic analysis at that time, the impacts associated with listing would not be readily distinguishable from those associated with critical habitat designation.

35. *Comment:* The draft economic analysis first suggests that the costs arising from the potential loss of development opportunity on private lands in Benton County will be borne by the existing landowners, and then suggests that the acquisition of conservation easements under the Benton County Habitat Conservation Plan (HCP) will be borne by the County (*i.e.*, public).

Our Response: Private owners of critical habitat in Benton County could sell the development opportunity (*i.e.*, conservation easement) on their land to the County if their land is a desired acquisition identified in the HCP. Under this scenario, the development impact would be to the public, because the development opportunity would be purchased from the private landowner with public funds. The conclusions in final economic analysis will be corrected.

36. *Comment:* The economic costs in the draft economic analysis are overstated because the critical habitat designation is assumed to result in a complete loss of all development potential for all private lands within the critical habitat designation, even though there are no direct regulatory impacts on privately owned lands within the critical habitat designation. Further, the draft economic analysis does not consider wetland and rural zoning constraints that already limit development. Most of the privately owned critical habitat is located outside the urban growth boundaries (UGBs) and would not be developed within the 20 year scope of the draft economic analysis.

Our Response: As described in Section 4.0, Federal regulations do not usually constrain development on private lands, and Federal endangered species laws generally do not apply to listed plants on private lands. However, much of the *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* habitat overlaps with Fender's blue butterfly habitat, is classified as wet prairie grassland habitat (*E. decumbens* var. *decumbens*), or occurs within the boundaries of the future Benton County HCP. In these situations, privately owned Fender's blue butterfly, *L. sulphureus* ssp. *Kincaidii*, and *E. decumbens* var. *decumbens* habitat will have some level of protection through conservation actions included in an incidental take permit for Fender's blue butterfly, recommended through a section 7 consultation for a section 404 permit, or built into an HCP. Considering the absence of specific information on how development projects would mitigate for impacts to the species, the extent to which a future development project would be impacted by the species and habitat conservation is uncertain. The draft economic analysis presents the value derived from the option for future development of private lands, and explains that estimated impacts are overstated in the case that development is not constrained within the proposed critical habitat designation. Embedded in land values is the likelihood and timing of potential future development; that is, a parcel of land unlikely to be developed within the next 20 years would have a lower option value for development than an imminently developable parcel. The likelihood and timing of development is therefore incorporated into this analysis. The analysis further explains that the cost of development restrictions can be calculated proportionally for a unit if development is prohibited on only a portion of the unit.

While wetland classification and rural zoning may limit development, they will not preclude it now or in the future. As described in the ''Example of Potential Development Impacts'' text box in Section 4.0, major development projects are being proposed on *Erigeron decumbens* var. *decumbens* wet prairie habitat, subject to compensatory mitigation. It is true that much of the privately owned land located outside the UGB may not be developed during the 20-year scope of the analysis, and that if it were developed it would be subject to the rural zoning regulations. However, the current zoning and future timing of development of each parcel of private land is not relevant to the economic analysis, because the economic impacts to private landowners will occur immediately after the lands are designated. Once announced, the critical habitat designation would impact the future development opportunity of a parcel for as long as the regulation is in place, even if the property is rural and located outside an UGB. Thus, while the actual development of a property may not occur within the 20-year scope of analysis, the impact to the private landowner from the critical habitat designation will occur the day the designation is announced, and therefore is appropriately measured in the draft economic analysis.

37. *Comment:* If critical habitat designation limits the development opportunity of privately owned land, as presented in the draft economic analysis, the analysis should evaluate likely price increases on the remaining developable land within the region, because a reduction in the supply of developable land will cause the price of the remaining developable land to increase.

Our Response: The impact of the loss in development opportunity on the remaining privately owned developable land, within the critical habitat designation is expected to be small, because the area impacted is relatively small compared to the supply of developable land in the region. As

explained in Section 4.1 of the draft economic analysis, most of the future urban and rural development is projected to occur predominately on lands used for agriculture. The privately owned portion of the designation (approximately 2,100 acres) represents one-tenth of one percent of the agricultural acres in the eight county area (approximately 2 million acres).

38. *Comment:* The proposed West Eugene Parkway (WEP), as designed prior to the critical habitat designation, was not an at-grade highway as described in the draft economic analysis, but rather an elevated highway. Therefore, the cost of species conservation activities presented in the draft economic analysis is in question.

Our Response: The comment is correct. According to Oregon Department of Transportation (ODOT), the proposed project design is for an elevated structure. However, the proposed critical habitat designation caused ODOT to look more closely at the elevation, placement of supports, and length of elevated section. Because of the proposed critical habitat designation, the elevation of the proposed project is now higher and the length of the elevated section longer. While Section 6.1.2.1 incorrectly described the pre-critical habitat designation project as an at-grade roadway, the cost estimate provided by ODOT for the draft economic analysis correctly reflects the best estimate of additional costs associated with reconfiguring the elevated section spanning the proposed designation (*i.e.*, higher and longer) to off-set impacts to the species. The final economic analysis will be corrected.

39. *Comment:* The WEP is unlikely to be built anytime in the near future, and it should be considered speculative until the project is approved in a Record of Decision (ROD) and survives numerous legal and financial obstacles and political hurdles. Because the project is only speculative at this time, it should be excluded from the draft economic analysis.

Our Response: As described in Section 1.3, the draft economic analysis estimates impacts based on activities that are ''reasonably foreseeable,'' including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. The WEP falls under this latter category. While it is not known when WEP will ultimately be constructed, WEP is a proposed project that is the product of more than 20 years of planning, public involvement, environmental analysis, and engineering, and the goal is to complete the NEPA process with a signed ROD by the end of 2006 (Section 6.1.2.1). Because the timing of the project is unknown (it will commence no earlier than 2008 based on anticipated dates for environmental compliance and permitting), the project is assigned an equal probability of occurring between years 2008 and 2026 to reflect the uncertainty.

40. *Comment:* The draft economic analysis does not consider benefits of critical habitat designation, including social welfare, input to regional economics, conservation bank revenues, recreation/educational/cultural benefits, support of local agriculture industry and jobs, land input for recreational values, and support of local tourism industry.

Our Response: Where data are available, the analysis attempts to recognize and measure the net economic impact of the proposed designation. For example, as described in Section 7.2.3, 145,000 people visit the Baskett Slough National Wildlife Refuge annually, primarily to hike and observe wildlife. While the visitor data are not broken down by species, and the annual number of individuals that visit the Refuge specifically to see Fender's blue butterfly and *Erigeron decumbens* var. *decumbens* is not known, at least 300 elementary school students and teachers visit the Refuge annually to observe Fender's blue butterfly. The use demonstrates educational, cultural, and recreational benefits related to wildlife viewing. However, the Refuge does not charge for the school program, and there are no willingness-to-pay values specific to the species. Therefore, the analysis acknowledges the educational, cultural, and recreational benefits that the Refuge provides, but does not quantify associated welfare benefits.

41. *Comment:* Economic benefits should be better quantified in the economic analysis, specifically the benefits associated with existence value, private land value increases due to supply constraints, farm and forest values of undeveloped lands, use values of natural lands, option values, amenity values of natural open spaces, ecological values, environmental quality, and social health and welfare.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. Our approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (*e.g.*, lost economic opportunity associated with restrictions on land use). When data are available, we attempt to measure the net economic impact in our economic analyses. However, no data was found that allows the measurement of such an impact, nor was information submitted during the public comment period.

Most of the other benefit categories submitted reflect broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus, we believe that explicit consideration of broader social values for these species and their habitats, beyond the more traditionally defined economic impacts, is not necessary because Congress has already clarified the social importance. As a practical matter, it is difficult to develop credible estimates of such values, because they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct.

42. *Comment:* The cost estimates in the draft economic analysis fail to consider the cumulative effect of regulations on private lands.

Our Response: We are required to consider only the effect of the proposed government action, which in this case is the designation of critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*. The appropriate baseline for use in the economic analysis is the regulatory environment without this regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with the designation of critical habitat. When critical habitat for other species has already been designated, it is properly considered part of the baseline for this analysis. Future critical habitat designations for other species in the area will be part of separate rulemakings, and consequently, their economic effects will be considered separately.

43. *Comment:* The draft economic analysis includes costs that are independent of and unrelated to the listing or critical habitat designation,

particularly costs related to maintaining the Baskett Slough National Wildlife Refuge and the West Eugene Wetlands restoration program. The proposed critical habitat is an overlay on previously delineated resources, and city and county ordinances and zoning, that are not considered in the draft economic analysis, resulting in an underestimation of actual costs; the draft economic analysis does not estimate the cumulative effects of regulation on private ownership.

Our Response: As described in Section 1.2 of the draft economic analysis, coextensive effects as quantified in the draft economic analysis may also include impacts associated with overlapping protective measures of other Federal, State, and local laws and programs that aid habitat conservation in the areas proposed for designation. The draft economic analysis notes that in the past, some measures have been precipitated by the listing of the species and impending designation of critical habitat. Habitat conservation actions protecting a listed species are likely to contribute to the efficacy of critical habitat designations. Therefore, the impacts of them are considered relevant for understanding the full effect of the proposed critical habitat designation. Further, considering the absence of specific information on how development projects on private land would mitigate impacts to the species, the extent to which a future development project would be impacted by the species and habitat conservation is uncertain. The draft economic analysis therefore presents the value derived from potential future development on private lands (*i.e.*, the complete loss of any and all development potential) and explains that estimated impacts would be overstated if development occurs within the proposed critical habitat designation. Any city, county, or other ordinance or regulation, such as wetland classification and rural zoning, may limit development, but not preclude it now or in the future (*see* ''Example of Potential Development Impacts'' text box in Section 4.0). Thus, the economic impact of restrictions to the private landowner is already captured in the estimation of complete loss of any and all development potential. Enforcement actions taken in response to violations of the Act, however, are not included.

44. *Comment:* The cost estimates are inadequate because of the extreme range of costs presented in the draft economic analysis.

Our Response: To account for the range of land values, the variety of mitigation measures available for off-setting impacts, and the uncertain timing and cost of project mitigation, the analysis presents the potential costs associated with species conservation actions as a range.

45. *Comment:* The draft economic analysis recognizes the potential for additional economic impacts under other state or local laws triggered by critical habitat designation. Yet, the economic analysis does not consider the efforts recently begun by the City of Eugene to inventory upland prairie and other habitats under Goal 5, which will be the basis of future recommendations on possible protection measures or conservation incentive programs.

Our Response: This is correct; the draft economic analysis does not specifically consider the City's inventory program. As stated by the commenter, this is goal oriented and it is uncertain what this inventory means in terms of future regulatory costs.

Summary of Changes From Proposed Rule

The area proposed as critical habitat in Eugene, Oregon, for the Fender's blue butterfly has been revised for this final designation. Specifically, the areas that were proposed as a corridor between stepping-stone areas and core populations are not included in this final designation. We re-evaluated these areas and determined that they do not provide features essential to the conservation of the Fender's blue butterfly. Specifically, the corridor is largely a channel of water, delineated bank to bank, which does not include prairie habitat. Furthermore, Schultz (1998, p. 291) documented that stepping-stones would be more beneficial to the butterfly than corridors, and McIntire *et al.* (2006, in review, p. 20–22) identified specific butterfly stepping-stone habitat in the Eugene, Oregon, area necessary to re-establish a connected, functioning network of habitat. Areas specifically identified in McIntire *et al.* (2006, in review, p. 20–22) were included in the proposed rule and remain in this final designation, with the exception of one stepping-stone area (0.4 ac (0.2 ha)) that was overlooked as a result of a mapping error in the proposed designation.

During the initial comment period for the proposed critical habitat designation, we received new information about two of the *Lupinus sulphureus* ssp. *kincaidii* units and one of the Fender's blue butterfly units. This information indicated that KL–8, KL–16B, and FBB–7 units included areas that do not provide the features essential to the conservation of these species. Therefore, we reduced KL–8 and FBB–7 to include only areas containing the features essential to the conservation of the species. Unit KL–16B was eliminated because it lacks appropriate features.

Based on comments from peer reviewers, we made minor modifications to the primary consitutent elements for all three species. In the first primary consitutent elements for the Fender's blue butterfly and *Erigeron decumbens* var. *decumbens,* we clarified that both upland and wet prairie habitat are features essential to the conservation of the species. For *Lupinus sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens,* we removed references from the first primary consitutent elements that gave a greater level of importance to proper moisture and protection from competitive invasive species than is essential.

In the proposed rule, the first Fender's blue butterfly primary consitutent element was as follows:

(1) Early seral upland prairie, oak savanna habitat with undisturbed subsoils that provides a mosaic of low-growing grasses and forbs, and an absence of dense canopy vegetation allowing access to sunlight needed to seek nectar and search for mates;

In this final rule, the first PCE is as follows:

(1) Early seral upland prairie, wet prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, an absence of dense canopy vegetation; and undisturbed subsoils.

In the proposed rule, the first primary consitutent element for *Lupinus sulphureus* ssp. *kincaidii* was as follows:

(1) Early seral upland prairie, oak savanna habitat with a mosaic of low-growing grasses, forbs, and spaces to establish seedlings or new vegetative growth, with an absence of dense canopy vegetation providing sunlight for individual and population growth and reproduction and with undisturbed subsoils and proper moisture and protection from competitive invasive species.

In this final rule, the first primary consitutent element is as follows:

(1) Early seral upland prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, and spaces to establish seedlings or new vegetative growth; an absence of dense canopy vegetation; and undisturbed subsoils.

In the proposed rule, the primary consitutent element for *E. decumbens* var. *decumbens* was as follows:

(1) Early seral upland prairie, oak savanna habitat with a mosaic of low-

growing grasses, forbs, and spaces to establish seedlings or new vegetative growth, with an absence of dense canopy vegetation providing sunlight for individual and population growth and reproduction and with undisturbed subsoils and proper moisture and protection from competitive invasive species.

In this final rule, the primary consitutent element is as follows:

(1) Early seral upland prairie, wet prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, and spaces to establish seedlings or new vegetative growth; an absence of dense canopy vegetation; and undisturbed subsoils.

Based on the information provided by several peer reviewers, we made minor corrections throughout the document to reflect the most accurate representation of the best available scientific information, including revisions to the methodology section to more accurately describe the methodology used for the proposed designation. The unit descriptions were also updated to more accurately identify areas included within the final designation.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) 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 (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) 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 to use and the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of 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 government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species, and therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), along with Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria and guidance and establish procedures to ensure that decisions made by the Service represent the best scientific data available. They require Service 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 determining which areas are critical habitat, the Service generally uses the listing package as a primary source of information. Additional information sources include 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. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or not required for recovery. It is generally understood that recovery of remaining populations will involve expanding existing populations, increasing connectivity, and/or improving habitat quality (Schultz *et al.* 2003, pp. 61, 68–70; Severns 2003a, p. 227; Wilson *et al.* 2003, pp. 79–80).

Most populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens* have not been studied well enough to determine how to restore functioning metapopulations in these highly fragmented prairie remnants. Because each of the remaining populations occurs in a unique habitat setting, habitat analyses will likely need to be completed to determine which lands are suitable for expanding populations, increasing connectivity, and reestablishing functioning metapopulations. McIntire *et al.* (in review, p. 2) demonstrate the usefulness of utilizing a focal species approach and spatially explicit models in planning restoration activities for at-risk species such as the Fender's blue butterfly. However, this approach to developing restoration options for conserving at-risk species requires an understanding of potentially suitable habitat within the constraints of a unique habitat setting (McIntire *et al.* in review, p. 3). For many populations of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii,*

and *E. decumbens* var. *decumbens,* we do not have the information necessary to specifically identify additional areas that may be suitable for restoration and useful for increasing connectivity between populations and larger metapopulations.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different strategy.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens* are derived from the biological needs of these species as described in the Background section of this proposal.

Space for Individual and Population Growth and Normal Behavior

Fender's blue butterfly

Historically, the Willamette Valley was a mosaic of upland and wetland prairie, with lupine patches rarely more than 0.3 miles (0.5 km) apart, providing a high probability that the Fender's blue butterfly could disperse between patches (Schultz 1998, p. 284). Habitat fragmentation has isolated the remaining populations of Fender's blue butterfly to such an extent that dispersal between suitable habitat patches is now likely a rare event (Schultz 1998, p. 291), which increases the risk of inbreeding depression (Schultz *et al.* 2003, p. 70). The rarity of host lupine patches and habitat fragmentation are the major ecological factors limiting reproduction, dispersal, and subsequent colonization of new habitat (Hammond and Wilson 1992, p. 172; Schultz 1997a, p. 88; Schultz and Dlugosch 1999, p. 231).

Conservation recommendations for recovering the Fender's blue butterfly include having enough high-quality habitat to maintain viable populations across the range of the species (Schultz *et al.* 2003, p. 61, 68). This will require habitat restoration to create new sites, expanding the size of existing sites, and creating habitat networks that connect isolated populations (Schultz *et al.* 2003, p. 68, 69–70). By comparing field notes (USFWS 2004a, entire data set) to population counts (Fitzpatrick 2005, pp. 10, 11; Hammond 2004, p. 35), we determined that the largest remaining Fender's blue butterfly populations generally occur in the largest, most connected prairie remnants currently supporting the species. Although the prairie habitat supporting these populations is threatened to varying degrees by invasive species and woody succession, it also appears to have the highest diversity of native plant species. Large habitat patches tend to support higher native species diversity (Noss and Cooperrider 1994, p. 34) and the Fender's blue butterfly depends on a diversity of native plant species for survival (Wilson *et al.* 1997, p. 3, 5).

To promote successful dispersal among lupine patches and reestablish functioning metapopulations, Fender's blue butterflies will likely require stepping stones of lupine patches that are close enough together for dispersing butterflies to have a high probability of finding the patches (Schultz 1998, p. 284, 286). This conservation reserve strategy is superior to narrow linear corridors because the Fender's blue butterfly flight patterns into non-lupine habitat make it unlikely they would stay in a narrow corridor (Schultz 1998, p. 284, 286, 291). Reestablishing stepping stones of lupine habitat between existing populations increases the likelihood that dispersing individuals will move from one large lupine patch to the next (Schultz 1998, p. 291). Lupine patches should be less than 0.6 mile (1 km) from their nearest neighbor (Schultz 1998, p. 291; Schultz 2001, p. 1008; Schultz and Crone 2005, p. 887, 892) to restore functioning metapopulations for the Fender's blue butterfly and ensure the long-term persistence of this species (Schultz *et al.* 2003, p. 70).

For the conservation of the Fender's blue butterfly we anticipate we will need several functioning habitat networks distributed across the range of the species. Connectivity will be best achieved among the component butterfly subpopulations by a stepping-stone arrangement of sites that meet minimum size, distance, and quality criteria.

Lupinus sulphureus ssp. *kincaidii*

For many organisms that are patchily distributed, the minimum viable population will often depend on both the occupied and surrounding unoccupied habitat that is protected and managed for the species (Nunny and Campbell 1993, p. 238). Plant populations often occupy only small regions of the available habitat at any one period, and this pattern is relevant to their conservation (Menges 1991, pp. 53, 54). The habitat between plant patches may serve as a site for future populations and may be critical for the long-term perseverance of the species (Nunny and Campbell 1993, p. 238). Wilson (1998b, p. 2) has documented that the open spaces between bunchgrasses in prairie habitat are often utilized for seedling establishment and the vegetative spread of forbs.

Native upland prairies are low-growing plant communities dominated by bunchgrasses with open spaces occurring between plants (Wilson 1998b, p. 2). Spaces between bunchgrasses remain available for the vegetative spread of lupine and seedling establishment necessary for expanding population size and increasing population viability. Severns (in review, p. 10) documents that *Lupinus sulphureus* ssp. *kincaidii* natural germinants were found primarily growing in habitats with exposure to sunlight such as areas of bare ground and short grasses. In addition to providing space for population growth, larger prairie habitats provide opportunity for population expansion because the native grasses and forbs maintain the short-grass prairie stature and provide the full-sun conditions necessary for the species to grow and expand into surrounding habitat (Wilson 1998b, p. 2).

Lupinus sulphureus ssp. *kincaidii* populations exhibit typical signs of inbreeding depression (a process that weakens plant fitness through repeated generations of inbreeding) such as low seed production, which is attributed to the small size and isolated nature of the species' current distribution (Severns 2003a, p. 221, 222; Wilson *et al.* 2003, p. 75). Insect outcrossing pollination (the transfer of pollen from the flower of one plant to the flower of another plant of the same species) has been documented as important for the conservation of *L. sulphureus* ssp. *kincaidii* (Wilson *et al.* 2003, p. 72, 75). Since *L. sulphureus* ssp. *kincaidii* is a long-lived perennial that can grow wider than 10 m across, and observations suggest that lupine patches are either one individual or a few closely related individuals (Severns 2003a, p. 225), successful outcrossing pollination will require large populations with many individuals or multiple plant patches of unrelated individuals that are functionally connected (*i.e.*, they are in close enough proximity that pollinators will move between the patches). The number of *L. sulphureus* ssp. *kincaidii* patches occurring within a prairie remnant has been positively correlated with increased seed production, likely because larger populations have a higher density of floral displays and attract more pollinators (Severns 2003a, pp. 221, 222, 225). Since population size is important for visibility to pollinators and the successful reproduction of *L. sulphureus* ssp. *kincaidii*, increasing the size of existing populations will play a role in recovering this species (Severns 2003a, p. 226).

Habitat management for the conservation of *Lupinus sulphureus* ssp. *kincaidii* should include expanding the size of existing populations by augmenting them with individuals from other populations (Severns 2003a, p. 227). The prairie habitat occurring between existing lupine patches is necessary to provide space for augmentations intended to reduce the effects of inbreeding depression. Smaller distances between plant patches increase the likelihood of outcrossing as insect pollinators more readily travel among nearby patches to transfer pollen between individual plants. Therefore, the stepping-stone reserve design recommended for the Fender's blue butterfly will also benefit *L. sulphureus* ssp. *kincaidii* by increasing opportunity for pollen transfer between existing plant patches and allowing current small populations to function together as larger ones (Severns 2003a, p. 227).

The *Lupinus sulphureus* ssp. *kincaidii* will benefit from conserved habitat across the historic range of the species, with populations larger than 0.25 ac (0.1 ha) of lupine cover and within 5 miles (8 km) of neighboring populations (Gisler *et al., in litt.*, 2005, pp. 6, 7). An area-based measurement is used for minimum patch size due to the difficulty of counting individual plants of this clonal species. The 5-mile (8-km) criterion is based on the maximum pollinating distance of the honeybee (*Apis mellifera*) (Beekman and Ratnieks 2000, p. 493; Steffan Dewenter and Kuhn 2003, p. 571), which is the pollinator with the greatest travel distance for *L. sulphureus* ssp. *kincaidii* (Gisler *et al., in litt.*, 2005, p. 7). These criteria are expected to promote larger functioning metapopulations, with increased population sizes and genetic diversity, which in turn promote long-term population viability and species conservation.

Erigeron decumbens var. *decumbens*

Erigeron decumbens var. decumbens populations are currently vulnerable to inbreeding depression throughout their range because they occur in small, isolated habitat patches (Jackson 1996, p. 88). Jackson (1996, p. 28) documents that conservation plans for the wet prairie habitat must emphasize connections, corridors, and large areas of contiguous habitat. Clark *et al.* (1993, p. 44) identified habitats critical for the conservation of *E. decumbens* var. *decumbens* and recommends protecting sites harboring large populations of native plants, prairie habitat providing physical links between *E. decumbens* var. *decumbens populations*, and potential sites for restoration in order to reduce the current threats to survival.

Erigeron decumbens var. *decumbens* populations are typically distributed in clumps scattered across the prairie habitat and dispersed among other prairie indicator species (Clark *et al.* 1993, pp. 21, 22). Larger prairie remnants are more likely to provide the conditions necessary to support population growth because the native species composition maintains the light and open spaces between bunch grasses necessary for this species to persist and expand. Conservation measures necessary for maintaining and increasing the few remaining populations of *E. decumbens* var. *decumbens* include promoting conditions for natural regeneration and possibly augmenting small populations with propagated individuals (Clark *et al.* 1995b, p. 22). Open spaces between bunch grasses allow *E. decumbens* var. *decumbens* to establish seedlings and vegetatively spread within a habitat patch. Larger prairie remnants provide the area necessary for planting propagated individuals and for natural regeneration.

Food

The Fender's blue butterfly uses *Lupinus sulphureus* ssp. *kincaidii*, *L. arbustus* (spurred lupine), and *L. albicaulis* (sickle-keeled lupine) as larval host plants. Adult Fender's blue butterflies require several forbs for nectar (Schultz and Dlugosch 1999, p. 232; Schultz *et al.* 2003, p. 65). Examples of adult nectar sources include: *Allium acuminatum* (tapertip onion), *Allium amplectans* (narrowleaf onion), *Calochortus tolmiei* (Tolmie's mariposa lily), *Eriophyllum lanatum* (woolly sunflower), *Sidalcea campestris* (Meadow checkermallow), *Sidalcea virgata* (rose checker-mallow), *Vicia sativa* (common vetch), and *V. hirsuta* (tiny vetch) (Kaye *in litt.a*, p. 2) These exotic vetches (*V. sativa* and *V. hirsuta*) are heavily used at many sites but are considered a lower quality source of nectar (Schultz *et al.* 2003, p. 65).

Light

As previously described, all three species are early seral and occur in open areas. Willamette Valley grasslands have been described as a mixture of wet and upland prairie habitat and oak/savanna habitat having a relatively open canopy cover (Altman *et al.* 2001, p. 261). These open areas were historically maintained by indigenous people who seasonally burned the land to facilitate hunting and gathering of food (Clark 2000, p. 3; Jackson 1996, pp. 11, 12). The fires prevented the widespread abundance of woody species and maintained the openness needed for early seral species to persist (Jackson 1996, p. 1; Wilson *et al.* 2003, p. 79). Change in this historic disturbance regime has allowed shrubs and trees to invade many prairies and oak/savannas.

Populations of Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* historically occurring in the oak/savannas were probably the first to be lost to succession and development. Most of the remaining populations were found in the valley floor prairies. *Lupinus sulphureus* ssp. *kincaidii* and many of the Fender's blue butterfly nectar sources do not tolerate decreases in available light resulting from dense canopy closure as prairies gradually grow into woodlands in the absence of disturbance (Schultz *et al.* 2003, p. 69). *Erigeron decumbens* var. *decumbens* typically occurs where woody cover is

nearly absent and where herbaceous vegetation cover is low in stature relative to the surrounding areas (Clark *et al.* 1993, p. 22).

Native Willamette Valley prairies are predominantly low-stature communities with most plant foliage occurring within 8 inches (20 cm) of the soil, but with flowering stalks of some of the grasses reaching up to 59 inches (150 cm) in height (Wilson 1998a, p. 2, 1998b, p. 2). Maintaining the stature of the prairie habitat that surrounds the patches of *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* is important for the conservation of these species. *Lupinus sulphureus* ssp. *kincaidii* seedlings are more numerous in shortgrass prairie habitat without tall competing vegetation (Severns in review, p. 9). Shading, whether by native or non-native vegetation, is likely to hamper *L. sulphureus* ssp. *kincaidii* seed germination and germinant survival, although reproducing plants may be able to persist in shaded conditions (Severns in review, p. 10, 11). The shortgrass prairie stature is also important for the conservation of the Fender's blue butterfly (Schultz *et al.* 2003, p. 69). This butterfly is more vigorous in the full sun of open habitats, which provide conditions that promote nectaring and ovipositioning (Schultz *et al.* 2003, p. 68).

As previously identified, populations of *Lupinus sulphureus* ssp. *kincaidii* occurring in Douglas County, Oregon, have been documented in atypical habitat for the species (Barnes 2004, p. 95). The Douglas County populations are in wooded areas dominated by *Pseudotsuga menziesii* (Douglas-fir), *Arbutus menziesii* (Pacific madrone), and other trees and shrubs (Barnes 2004, p. 102) with canopy cover ranging from 50 to 80 percent (Barnes 2004, p. 102). Because these populations represent the southern most extent of this species' range, they may be adapted to tolerate more extreme habitat and/or other environmental conditions.

Moisture

Plant communities in prairie ecosystems mainly vary due to the differences in moisture attributed to elevation, slope, and soil permeability (Jackson 1996, p. 9). The Willamette Valley prairies have been categorized into two habitat types, wet prairie and upland prairie (Jackson 1996, p. 9). The wet prairie habitat is defined as areas of low relief, with poor drainage and hydric, clayey soils (Jackson 1996, p. 9), dominated by bunchgrasses, most predominately *Deschampsia caespitosa* (Clark *et al.* 1993, p. 18; Jackson 1996, pp. 9, 10). Jackson (1996, p. 9) describes the term ''upland prairie'' as misleading because the habitat largely occurs on the valley floor. A few upland prairie habitat patches occur on colluvium upland soils (*i.e.*, poorly sorted debris that has accumulated at the base of slopes, in depressions, or along small streams through gravity, soil creep, and local wash (Jackson 1996, p. 10)), but many occur on soils not considered upland, such as terraces, alluvium, and even floodplain soils (Clark *et al.* 1993, p. 20; Jackson 1996, p. 10; Wilson *et al.* 2003, p. 79). Although many of the habitat patches supporting the Fender's Blue Butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* occur on the valley floor, they have been characterized as ''upland prairies'' because of their drier conditions, which are attributed to better draining soils or local variations in topography (Jackson 1996, p. 10). This upland prairie habitat is typically characterized by the vegetation that thrives in these well-drained conditions (associated species previously identified) (Jackson 1996, p. 10).

Erigeron decumbens var. *decumbens* grows in both wet and upland prairies. The populations in wet prairies tend to occur in the driest portions of the wet prairie habitat. *Erigeron decumbens* var. *decumbens* grows in the driest habitats in which *Deschampsia caespitosa* can grow, but prefers slightly dryer microsites where *D. caespitosa* is sparse (Clark *et al.* 1993, p. 18). *Lupinus sulphureus* ssp. *kincaidii* populations occur predominately in upland prairie habitat with a few occurring in the transitional areas between wet and upland prairie habitats. The Fender's blue butterfly largely occurs in upland prairies; however, several adult nectar sources occur in wet prairies and are utilized by the butterfly when wet prairie patches are adjacent to lupine patches.

Reproduction

Fender's blue butterfly

Adult Fender's blue butterflies emerge in May and females lay their eggs on the underside of lupine leaves. The butterfly uses the following three lupine species as host plants for oviposition: *Lupinus sulphureus* ssp. *kincaidii*, *L. arbustus*, and *L. albicaulis*. A few weeks after oviposition, the eggs hatch and the larvae eat lupine leaves for a few weeks until the lupines senesce. After lupine senescence, the larvae enter an extended diapause that lasts until the following March. When the lupine plants resurface, the larvae emerge from the soil litter and begin eating the young lupine leaves until the larvae pupate in mid-April (Schultz *et al.* 2003, p. 64). Adult females likely lay up to 350 eggs (Schultz *et al.* 2003, pp. 66, 67) over their estimated 15-day lifespan. Based on survivorship information (Schultz and Crone 1998, p. 247; Schultz *et al.* 2003, p. 67), we estimate that of the 350 eggs, approximately 1.5 will survive to adulthood, indicating that Fender's blue butterfly survivorship is very low.

Native prairie composition, including short-stature grasses, provides the full sun conditions required for *Lupinus sulphureus* ssp. *kincaidii* plants to produce an abundance of leaves on which Fender's blue butterfly lays eggs. Invasive species often cover the lupine leaves, making it difficult for the butterfly to oviposit. Native nectar sources are of higher quality than non-native adult food sources, and butterfly populations dependent on low quality exotic vetches may spend more of their limited adult flight time nectaring, and less time ovipositioning (Schultz *et al.* 2003, p. 65).

Schultz and Crone (2001, pp. 1889–1890) found that Fender's blue butterfly population patterns are influenced by habitat patch size through residence time of female butterflies; butterflies emigrate from smaller patches more quickly than they do from larger patches. This directly influences the numbers and spatial distribution of eggs, and therefore the future number of butterflies. The tendency of the Fender's blue butterfly to quickly disperse from small, isolated lupine patches increases the risk they won't find another suitable oviposition site. This, in turn, reduces the total lifetime reproduction to well below the 350 egg maximum reported by Schultz *et al.* (2003, pp. 66, 67). Because Fender's blue butterflies only live for approximately 2 weeks, a change in residence time of even 1 day may markedly influence the distribution of eggs.

Lupinus sulphureus ssp. *kincaidii*

Lupinus sulphureus ssp. *kincaidii* flowers possess a pump or piston arrangement for cross-pollination by insects, as is common in other lupines (Kaye 1999, p. 50). Pollination of *L. sulphureus* ssp. *kincaidii* appears to be carried out by bees visiting the flowers; the relatively small flowers attract only small bees (Wilson *et al.* 2003, p. 74). Several bee species have been documented commonly visiting *L. sulphureus* ssp. *kincaidii* flowers, such as small bumblebees (*Bombus mixtus* and *B. californicus*) and the European honey bee (*Apis mellifera*). As described in Wilson *et al.* (2003, p. 75), insect pollination appears to be critical for successful seed production in *L.*

sulphureus ssp. *kincaidii*. The maturation of the flowers of *L. sulphureus* ssp. *kincaidii* promotes outcrossing pollination because of the way they mature from the bottom of the inflorescence to the top (Wilson *et al.* 2003, p. 75).

Inbreeding depression may limit the seed set and seed fitness of smaller lupine populations (Severns 2003a, p. 225; Wilson *et al.* 2003, p. 75). Conserving *Lupinus sulphureus* ssp. *kincaidii* will likely require the outcrossing of populations by planting new individuals from different sources near existing populations, and increasing pollinator connectivity between existing populations (Severns 2003a, p. 227).

Erigeron decumbens var. *decumbens*

This species spreads vegetatively via rhizomes over short distances (about 4 inches (10 cm)) (Kaye 2000, p. 1) and the plants often grow in clumps, making it difficult to distinguish individuals. Sexual reproduction is facilitated by insect pollination. Pollinators include species such as the field crescent butterfly (*Phyciodes campestris*), sweat bees (Halictidae spp.), and a syrphid fly (*Toxomerous occidentalis*) (Jackson 1996, p. 81). Seeds are dispersed by wind, but over very short distances (Clark *et al.* 1993, p. 33). Research indicates that scarification stimulates germination, but the mechanism for seed coat scarification (scoring of the seed coat) in the wild is unknown (Clark *et al.* 1995b, pp. 14–15). Germination of *Erigeron decumbens* var. *decumbens* seeds occurs mostly in April and May (Clark *et al.* 1997, p. 45) and flowering is concentrated in June and early July (Meinke 1982, p. 136).

Jackson (1996, p. 2) reports that remaining populations of *Erigeron decumbens* var. *decumbens* may be experiencing reproductive difficulties because they are extremely small and isolated from one another. Gene flow between individuals of a sexually-reproducing species is requisite for their persistence (Jackson 1996, pp. 2–3). Research results indicate that the *E. decumbens* var. *decumbens* is at risk of inbreeding depression (Jackson 1996, p. 88). To reduce this risk and to conserve the species, it will likely be necessary to increase the number of habitat patches located in close proximity to one another such that functioning metapopulations are restored. This population arrangement increases the opportunities for insects to carry pollen between individual plants and increases the likelihood of reproductive success of *E. decumbens* var. *decumbens*.

Areas Representative of the Historic Geographical and Ecological Distributions of a Species

Fender's blue butterfly

Conservation recommendations for the Fender's blue butterfly include having a reserve design with a minimum of two populations for each occupied county (eight total) so that a local back-up is always available in case of site extirpations (Hammond and Wilson 1993, p. 45). By maintaining viable metapopulations across the species' range, the distribution would be wide enough to buffer the species from catastrophes that may occur in portions of its range (Schultz *et al.* 2003, p. 68).

Recommendations for reserve design criteria for this species include preserving populations that occur under unique conditions, as distinct ecological segregates (Hammond and Wilson 1993, p. 45). Therefore, populations occurring in unique habitat conditions should be conserved across the range of the species. A few unique Fender's blue butterfly populations occur on valley hillsides, such as Coburg Ridge, but the vast majority of remaining sites occur on the valley floor under different habitat conditions (Hammond and Wilson 1993, p. 45). The unique habitat supporting these valley hillside populations appears to be stable climax grasslands due to the presence of deep, fine-textured, self-mulching soils or Ustic (very dry) lithosols (Franklin and Dyrness 1973, p. 119; Hammond 1994, p. 45).

Lupinus sulphureus ssp. *kincaidii*

Lupinus sulphureus ssp. *kincaidii* populations in Douglas County, Oregon and Lewis County, Washington, represent the furthest southern and northern extent of the current range, respectively. These populations are highly disjunct and isolated from the Willamette Valley populations with approximately 81 miles (131 km) between the northernmost Willamette Valley population to the Lewis County, Washington population, and approximately 54 miles (87 km) separating Oregon's south Willamette Valley populations from the Douglas County populations.

The primary habitat for *Lupinus sulphureus* ssp. *kincaidii* is open upland prairie and meadow edges, often near oak trees with a relatively open canopy cover. Most of the Douglas County, Oregon, populations appear to tolerate more shaded habitat conditions with canopy cover of 50 to 80 percent (Barnes 2004, p. 102). Because these populations represent the southern-most extent of this species' range, they may be adapted to tolerate more extreme habitat or other environmental conditions. Therefore, conservation of *L. sulphureus* ssp. *kincaidii* populations across their current range will require conservation of areas in Lewis County, Washington and Douglas County, Oregon, in addition to areas in the Willamette Valley, Oregon (Gisler *et al.*, in litt., 2005, pp. 3, 11; Robinson *et al.*, *in litt.*, 2005, pp. 2, 3).

Erigeron decumbens var. *decumbens*

Erigeron decumbens var. *decumbens* occurs on wetland prairie dominated by *Deschampsia caespitosa.* It also occurs on a few upland prairie sites characterized by a mix of native and non-native bunchgrasses (Jackson 1996, p. 39; Clark 2000, p. 3). Because the species occurs in both wet prairie and upland prairie habitat, conservation of representative populations in both of these habitat types is important to its conservation. As previously described, the long-term persistence of small populations will likely depend on augmentation with propagated individuals (Clark *et al.* 1995b, p. 23). Because there are very few surviving populations of *E. decumbens* var. *decumbens*, and they occur in both wet and upland prairie habitats, population augmentations must be sensitive to geographic variation within the species.

Although it may be possible to reestablish functioning metapopulations across the range of the Fender's Blue Butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*, it is highly unlikely that these metapopulations will ever be reconnected because of the distance between existing populations in an extremely fragmented landscape. Each metapopulation will therefore need to be independently viable, supporting multiple populations to reduce the risk of localized extinction.

With so few remaining populations of each of these species, losing any one of the populations through a natural or human-caused event will measurably increase the likelihood of extinction for that species. For example, an accidental spraying of insecticide or herbicide on a Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* population could eliminate the entire population of one or both species. Hammond (2001, pp. 3, 4 and 2002, pp. 3, 4) documents a substantial Fender's blue butterfly population decline in 1998 as the result of roadside herbicide spraying and bulldozer scraping throughout large portions of the habitat supporting a population in Yamhill County. Fortunately, this population is supported by three distinct lupine

patches, and only two of the patches were impacted. The butterflies from the third patch were able to re-colonize the impacted areas, and the Fender's blue butterfly population was able to recover by 2001 (Hammond 2002, pp. 3, 4). Although the likelihood of such an event is variable and difficult to predict, the extant small populations are at high risk of extirpation when they do occur.

Primary Constituents Elements for the Fender's blue butterfly, Lupinus sulphureus ssp. *kincaidii, and Erigeron decumbens* var. *decumbens*

Pursuant to our regulations, we are required to identify the known physical and biological features (primary constituent elements (PCEs)) essential to the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens.* All areas designated as critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* are occupied, are within the species' historic geographic range, 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 species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* PCEs are as follows:

The PCEs for Fender's blue butterfly are:

(1) Early seral upland prairie, wet prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, an absence of dense canopy vegetation, and undisturbed subsoils.

(2) Larval host plants *Lupinus sulphureus* ssp. *kincaidii*, *L. arbustus*, or *L. albicaulis*;

(3) Adult nectar sources, such as: *Allium acuminatum* (tapertip onion), *Allium amplectens* (narrowleaf onion), *Calochortus tolmiei* (Tolmie's mariposa lilly), *Camassia quamash* (small camas), *Cryptantha intermedia* (clearwater cryptantha), Eriophyllum lanatum (wooly sunflower), *Geranium oreganum* (Oregon geranium), *Iris tenax* (toughleaf iris), *Linum angustifolium* (pale flax), *Linum perenne* (blue flax), Sidalcea campestris (Meadow checkermallow), Sidalcea virgata (rose checker-mallow), *Vicia cracca* (bird vetch), *V. sativa* (common vetch), and *V. hirsute* (tiny vetch);

(4) Stepping-stone habitat, consisting of undeveloped open areas with the physical characteristics appropriate for supporting the short-stature prairie oak savanna plant community (well drained soils), within 1.2 miles (~2 km) of natal lupine patches.

The PCEs for *Lupinus sulphureus* ssp. *kincaidii* are:

(1) Early seral upland prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, and spaces to establish seedlings or new vegetative growth; an absence of dense canopy vegetation; and undisturbed subsoils.

(2) The presence of insect outcrossing pollinators, such as *Bombus mixtus* and *B. californicus*, with unrestricted movement between existing lupine patches.

The PCE for *Erigeron decumbens* var. *decumbens* is:

(1) Early seral upland prairie, wet prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, and spaces to establish seedlings or new vegetative growth; an absence of dense canopy vegetation; and undisturbed subsoils.

This designation is designed for the conservation of PCEs necessary to support the life history functions which were the basis for the proposal. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species's life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features essential to the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii*, and *Erigeron decumbens* var. *decumbens.*

We reviewed available information that pertains to the habitat requirements of these species and evaluated all known species locations using data from the following sources—spatial data for known species locations from the Oregon Natural Heritage Information Center (ORNHIC 2004, entire data set), Washington Natural Heritage Program (WNHP 2005, entire data set), Corps (Corps 2004, entire data set), and Bureau of Land Management (BLM 2005, entire data set); United States Geological Survey (USGS 2000, data set for species range) 1:24,000 scale 3.75 digital orthophotographic quarter quadrangle images; recent biological surveys and reports; site-specific habitat evaluations (USFWS 2003a, pp. 1–34; USFWS 2004a, pp. 1–576, 2004c, pp. 1–7); data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses or reports; and discussions with species experts.

Criteria Used To Identify Critical Habitat

We are designating critical habitat for specific areas that we have determined were occupied at the time of listing and that contain the primary constituent elements for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens.* Prior to the critical habitat proposal, Fender's blue butterfly occupancy was recorded by simply reporting the location of occupied lupine patches (Schultz and Dlugosch 1999, pp. 231–232). However, as previously described, adult butterflies utilize a variety of prairie species in addition to the lupine habitat. As a result, the final listing rule under-represented the known range of the Fender's blue butterfly at the time of listing. Additionally, there are inconsistencies in the literature regarding how occupancy is documented. Often the occurrence data are presented by site; other times they are presented by population (Schultz *et al.* 2003, p. 62) or by documenting occupied prairie remnants (Schultz 1998, p. 284; Schultz 2001, p. 1008), and at least one publication interchanges populations and sites (Wilson *et al.* 1997, p. 5). Furthermore, there is often an inconsistency in the number of populations that are reported since there is no defined convention for grouping sites into populations. For example, Severns (2003a, p. 222) documents 13 isolated populations based on Schultz's (1998, p. 286) discussion of isolated prairie remnants, while other documents identify 16 populations (Hammond 2004, p. 1; Schultz *et al.* 2003, p. 62). For this critical habitat designation, we have identified prairie habitat supporting Fender's blue butterfly occurrences known at the time of listing, regardless of the presence or absence of lupine. In order to determine the extent of the area supporting these populations, we identified those areas within 1.2 miles (2 km) (Fender's blue butterfly average dispersal distance) that contain the

features essential to the conservation of this species.

To identify areas of habitat containing the features essential for the conservation of all three species, we selected areas that represent the current distribution of each species, are of sufficient quality (including size) to contribute to functioning metapopulations (including areas necessary for connectivity between populations), or that represent unique ecological conditions.

We selected occupied areas exhibiting the highest quality habitat by evaluating the following factors for each known occurrence—the presence of prairie indicator species, degree of habitat degradation (exotic species and succession to shrubs and trees), population size, and available surrounding prairie habitat to support population growth. Specifically, we selected occupied prairie habitat supporting a minimum of three prairie indicator species and providing adequate available habitat for population growth (surrounded by short-grass prairie habitat), and areas where habitat management activities would be effective at controlling threats (USFWS 2004a, entire data set; USFWS 2005, pp. 1–19).

We then selected areas that provide for population connectivity. As described in the Primary Constituent Elements section, connectivity is central to re-establishing functioning metapopulations for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and to ensure their long-term persistence. For the Fender's blue butterfly, we evaluated areas providing the features essential to the conservation of the species within 1.2 miles (2 km) of the largest populations across the range of the species. For both *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens*, we evaluated occupied areas within 5 miles (8 km) (estimated pollinating distance of the honeybee (*Apis mellifera*)) of the largest populations across the range of both species.

All areas occupied at the time of listing that support the PCEs were screened using the criteria below, and the results were used to delineate the habitat containing the features essential to the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens:*

(1) We used our best professional judgment to select prairie remnants supporting core populations distributed across their respective ranges. Based on site-specific evaluations completed during field verification of occurrence data (USFWS 2003a, pp. 1–34, 2004a, entire data set), and various scientific reports (Severns 2004, pp. 1–12; Hammond 2004, pp. 1–35; Fitzpatrick 2005, pp. 1–11; Kuykendall and Kaye 1993a, pp. 1–41 + append., 1993b, pp. 1–16 + append.; Clark *et al.* 1993, pp. 1–55 + append.), core sites were identified as the largest, best-quality sites that significantly contribute to both local metapopulation function and rangewide distribution.

From the areas selected according to the above principles, we eliminated some areas from further consideration if (1) the area was degraded and unlikely to be restorable; and (2) the area was small, highly fragmented, or severely isolated so that it would provide little or no long-term conservation value. These sites may prove to be important in the future if new species occurrences are identified in their vicinity.

(2) In addition to habitat patches meeting criteria 1 above, we evaluated all prairie habitat in proximity to core populations. Specifically, these areas include habitat patches meeting the criteria below:

(a) For the Fender's blue butterfly, we selected areas providing the Primary Constituent Elements within 1.2 miles (2 km) of a core Fender's blue butterfly population. These areas generally occur adjacent to or between core Fender's blue butterfly populations.

(b) For *Lupinus sulphureus* ssp. *kincaidii*, we selected areas located within 5 miles (8 km) of core populations supporting at least 0.25 ac (0.1 ha) of plant cover (Gisler *et al.*, *in litt.*, 2005, pp. 6, 7), and occupied areas with enough surrounding prairie habitat to support 0.25 ac (0.1 ha) of plant cover;

(c) For *Erigeron decumbens* var. *decumbens,* we selected areas located within 5 miles (8 km) of core populations supporting a minimum of 200 plants (Robinson *et al., in litt.,* 2005, p. 4; Zwartjes, *in litt.,* 2005, p. 2), and occupied areas with enough surrounding prairie habitat to support a minimum of 200 plants. Because we do not have plant counts for all populations, we used *Erigeron decumbens* var. *decumbens* average density information (Clark *et al.* 1993, p. 23, 42) to estimate the area needed to support 200 plants, which equaled 0.6 ac (0.24 ha).

After screening prairie remnants using criteria 1 and 2 above, we completed a review of these areas to ensure populations occurring in atypical ecological settings were also included. Specifically, we determined that the selection criteria assured inclusion of Fender's blue butterfly populations occurring on valley hillsides that may be climax grasslands, and of *Erigeron decumbens* var. *decumbens* populations occurring on both wet and upland prairie habitats. Because selection criteria number 1 identified core populations across the range of each species, it inherently included *Lupinus sulphureus* ssp. *kincaidii* populations in Douglas County, Oregon, where plants tend to be more shade tolerant.

The PCEs were examined in combination with habitat maps, land use maps, aerial photographs, and occurrence data for populations meeting the above criteria, in order to identify the extent of prairie habitat supporting viable species occurrences. By working with local land managers and scientific experts familiar with the prairie habitat patches, we identified the prairie habitat boundaries for the occurrences meeting our criteria and digitized these prairie boundaries. We then asked the local land managers and scientific experts to review prairie boundary maps to ensure that only areas able to support the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens* were included in our prairie boundaries. The proposed critical habitat units were delineated by overlaying extant species locations meeting criteria 1 and 2 above, and mapping prairie boundaries onto 2000 USGS 1:24,000-scale 3.75 orthophotographic quadrangle images. The mapped prairie boundaries formed the boundaries of critical habitat units.

When determining final critical habitat map boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack any PCEs for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens.* Any such structures and the land under them inadvertently left inside critical habitat boundaries of this final rule are excluded by text and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

We designated critical habitat in areas that we determined were occupied at the time of listing, and that contain sufficient primary constituent elements (PCEs) to support life history functions essential for the conservation of the species. All units were designated based on sufficient PCEs being present to support Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens* life

processes. Some units contained all PCEs and supported multiple life processes. Some segments contained only a single PCE necessary to support use of that habitat by Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii,* and *E. decumbens* var. *decumbens.*

A discussion of each area designated as critical habitat is provided in the unit descriptions below.

Special Management Considerations or Protections

When designating critical habitat, we determine whether areas occupied at the time of listing and containing the primary constituent elements may require special management considerations or protections.

Maintenance of open habitat conditions

Since most prairie habitat within the range of these species is early-seral, active management is necessary for the conservation of all populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens* that occur in the proposed units described below. Without active management or natural disturbance, many populations may be lost to habitat succession (Wilson 1998a, p. 15, 1998b, p. 13; Wilson *et al.* 2003, p. 80) as trees and shrubs grow and outcompete early seral plants and shade or crowd out important early seral species such as *L. sulphureus* ssp. *kincaidii, E. decumbens* var. *decumbens,* and Fender's blue butterfly nectar sources. Left unmanaged, entire lupine populations in these early seral habitats may disappear (Wilson *et al.* 2003, pp. 79, 80).

Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii*

Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* populations respond positively to habitat restoration. Mowing, burning, and mechanical removal of weeds, when done appropriately, have all been shown to benefit Fender's blue populations. At sites managed by The Nature Conservancy (TNC), the Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* populations increased following removal of noxious non-native plants such as *Rubus discolor* (Himalayan blackberry) and *Cytisus scoparius* (Scotch broom) (Fitzpatrick 2005, pp. 6, 7, 10, 11, 20). At Baskett Slough National Wildlife Refuge in western Oregon, Wilson and Clark (1997, p. 10, 11) studied the effects of controlled fire and mowing on the Fender's blue butterfly and its native upland prairie. Although fire killed all larvae in treated patches, nearby unburned (untreated) patches provided a source of female Fender's blue butterflies that were able to recolonize the entire burned (treated) area. Wilson and Clark (1997, pp. 10, 23) also found that in the year following mowing and burning treatments, Fender's blue butterfly eggs were 10 to 14 times more abundant in treated plots than in undisturbed control plots. Woody plants were reduced by 45 percent with burning and by 66 percent with mowing. At the Corps' Fern Ridge Reservoir, the Fender's blue population has increased dramatically since fall mowing of *L. sulphureus* ssp. *kincaidii* patches has been implemented. The abundance of Fender's blue butterfly eggs and *L. sulphureus* ssp. *kincaidii* has increased as blackberry bushes have been controlled in several test plots located on BLM lands in Eugene, Oregon (Kaye and Cramer 2003, p. 10). In general, Fender's blue butterfly egg abundance increased substantially at sites treated to control non-native weeds (Schultz *et al.* 2003, p. 69).

Erigeron decumbens var. *decumbens*

Since periodic fire is believed to have historically maintained open prairie conditions, the use of prescribed burning as a maintenance tool has been investigated for restoring wet prairie habitats (Clark and Wilson 1998, p. 2). Studies investigating the effects of fire on *Erigeron decumbens* var. *decumbens* populations have been inconclusive as to whether fire promotes or inhibits populations (Wilson and Clark 1997, p. 1). Additionally, research efforts investigating the control of woody vegetation in wet prairies demonstrated that none of the treatments (fire, mowing, and hand removal of woody vegetation) proved to be more effective than the others (Clark and Wilson 2000, p. 2). Mowing with the removal of cut material increased the presence of non-native herbaceous species and should not be used as a management tool (Clark and Wilson 2000, p. 2). Because *Erigeron decumbens* var. *decumbens* does not tolerate the presence of woody vegetation, habitat management will be required for the long-term persistence of this species. Further investigation is needed to determine the most appropriate techniques for managing available habitat. Also, due to the low reproductive capability of the species, conservation of the *E. decumbens* var. *decumbens* will likely depend on artificially augmenting populations in areas where woody vegetation has been removed (Clark 2000, pp. 9–10).

Reduce Habitat Fragmentation and Increase Population Size

The Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens* are at risk of inbreeding depression and site extirpation across their respective ranges because populations are small and isolated from one another (Jackson 1996, p. 6; Schultz *et al.* 2003, p. 62, Severns 2003a, p. 222, 2003b, p. 334). All three species will benefit from reestablishing prairie plant patches in proximity to core populations.

Efforts have been made to establish stepping stones of lupine habitat between core Fender's blue butterfly populations occurring on BLM lands and Corps lands. A small patch of *Lupinus sulphureus* ssp. *kincaidii* planted in 2001, between two core Fender's blue butterfly populations, became occupied by the species during the 2004 field season (Severns 2004, pp. 7–8). While inconclusive, this observation provides evidence that Schultz's (1998, p. 291) recommended stepping-stone reserve design may allow for successful dispersal between populations (Severns 2004, p. 12). Restoration of a metapopulation structure is considered necessary to restore viable populations (McIntire *et al.* in review, p. 1).

McIntire et al. (in review, p. 1–47) completed a study to determine if fragmented prairie remnants near Eugene, Oregon, can be restored to a large functioning metapopulation that will persist over the long term. Several populations occur in this area but they are too far apart for the butterfly to disperse (greater than 1.2 miles (2 km)), and there are few intervening habitat patches. This study specifically looked at the conservation potential of restorable land located between the populations in a matrix of urban and agricultural land uses. Results of this study indicate that restoring existing prairie habitat to high quality may result in viable but unconnected populations unless habitat between populations is also reestablished.

Expanding *Erigeron decumbens* var. *decumbens* populations will require more investigation into the roles of sexual and vegetative reproduction of this species. If sexual reproduction proves to be most important for population recruitment, mangers will need to focus on strategies that promote flowering, seed production, and seedling establishment (Clark 2000, p. 9). However, if vegetative regeneration is predominant, managers will need to focus on activities that promote ramet (refers to individual plants in a *clump,*

each portion of which is identical with the original parent plant) production (Clark 2000, p. 9). Clark et al. (1995b, pp. 22–23) found that vegetative propagation is a viable technique for *E. decumbens* var. *decumbens;* populations may also be increased by sowing seeds under appropriate conditions, although this technique appeared to be less effective than vegetative propagation.

Roadside, Power Right-of-Way, and Railroad Maintenance

Many remaining populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. kincaidii, and *Erigeron decumbens* var. *decumbens* populations occur in road rights of ways and are adversely affected by maintenance activities such as mowing or spraying of herbicides at the wrong time of year. A few *L. sulphureus* ssp. *kincaidii* populations along roads persist, likely because the routine maintenance provides open, full-sun conditions characteristic of *L. sulphureus* ssp. *kincaidii* habitat.

Protection

Several *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* populations occur on private lands and consequently remain unprotected by existing state or Federal statutes, which do not protect listed plants on private lands (Wilson *et al.* 2003, p. 72). Limited conservation of plant populations may be provided under programs administered by the USDA Natural Resources Conservation Service, such as the Wetland Reserve Program. Current program rules prioritize disturbed agricultural lands over prairie remnant habitats; this limits the programs' ability to protect existing plant populations that typically do not occur in disturbed agricultural lands. Wilson *et al.* (2003, p. 80) concluded that, lacking statutory protection, many of the plant populations occurring on private lands will likely be lost to development, agriculture, and invasion of weeds.

The Fender's blue butterfly depends primarily on *Lupinus sulphureus* ssp. *kincaidii* as a larval food source and for egg laying (ovipositioning). When populations of *L. sulphureus* ssp. *kincaidii* are destroyed, it also reduces the opportunity to expand existing Fender's blue butterfly populations.

Critical Habitat Designation

We are designating 13 units as critical habitat for the Fender's blue butterfly, 13 units for *Lupinus sulphureus* ssp. *kincaidii,* and 9 units for *Erigeron decumbens* var. *decumbens* (*see* Figure 1). The critical habitat areas described below represent our best assessment at this time of areas determined to be occupied at the time of listing, containing the primary constituent elements essential for the conservation of the species, and that may require special management.

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Figure 1, Index Map

Fender's Blue Butterfly (FBB) *(Icaricia icarioides fenderi), Lupinus sulphueus* ssp. *kincaidii* (Kincaid's Lupine (KL)), and *Erigeron decumbens* var. *decumbens* (Willamette Daisy (WD))

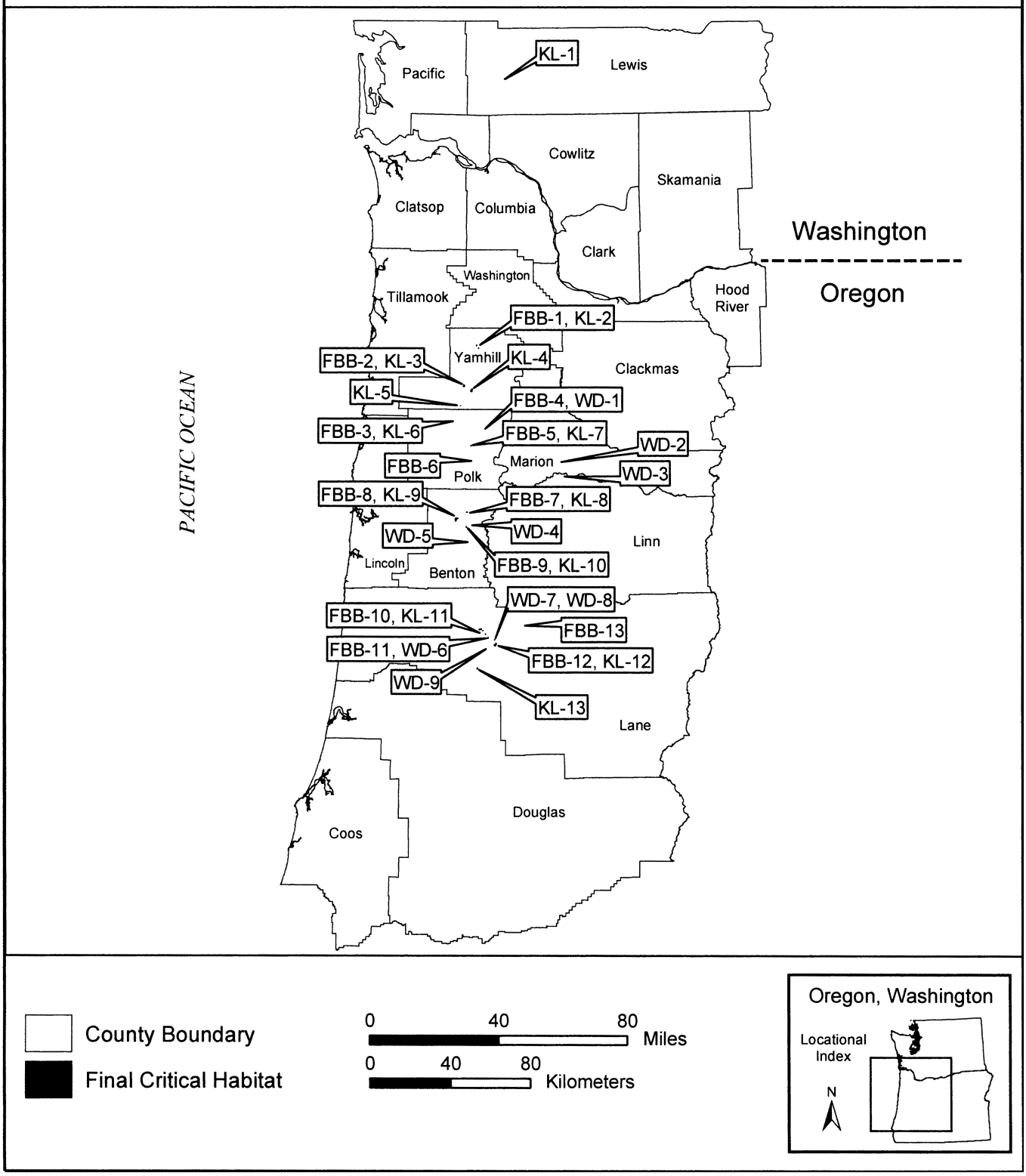

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Table 1 shows the lands being excluded from critical habitat pursuant to section 4(b)(2) of the Act, and Table 2 shows the approximate area designated as critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *Kincaidii,* and *Erigeron decumbens* var. *decumbens* by land ownership and State.

TABLE 1.—APPROXIMATE AREA AC (HA) EXCLUDED FROM CRITICAL HABITAT FOR THE *Lupinus sulphureus* SSP. *Kincaidii* PURSUANT TO SECTION 4(B)(2) OF THE ACT

Location	Area proposed for designation	Excluded area
Lewis County, Washington (Private lands excluded).	4 ac (1.6 ha)	1.8 ac (0.7 ha).
Douglas County, Oregon (All Federal and private lands excluded).	100.4 ac (40.6 ha)	100.4 ac (40.6 ha).

TABLE 2.—APPROXIMATE AREA AC (HA) FOR CRITICAL HABITAT UNITS DESIGNATED FOR THE FENDER'S BLUE BUTTERFLY (FBB), *Lupinus sulphureus* SSP. *Kincaidii* (KL), AND *Erigeron decumbens* VAR. *decumbens* (WD)

Unit	Federal	State	County/city	Private	Total
FBB–1	0 (0)	0 (0)	0 (0)	20.3 (8.2)	20.3 (8.2)
FBB–2	0 (0)	0 (0)	0 (0)	51 (20.6)	51 (20.6)
FBB–3	0 (0)	2.5 (1)	0 (0)	1.1 (0.5)	3.6 (1.5)
FBB–4	628.6 (254.4)	0 (0)	0 (0)	535.8 (216.8)	1,164.4 (471.2)
FBB–5	0 (0)	0 (0)	0 (0)	12.3 (5)	12.3 (5)
FBB–6	0 (0)	0 (0)	0 (0)	18.3 (7.4)	18.3 (7.4)
FBB–7	0 (0)	1.8 (0.7)	0 (0)	9.7 (3.9)	11.5 (4.6)
FBB–8	0 (0)	0 (0)	0 (0)	716.7 (290)	716.7 (290)
FBB–9	0 (0)	0 (0)	0 (0)	48.5 (19.6)	48.5 (19.6)
FBB–10	307.8 (124.5)	0 (0)	17.8 (7.2)	161.8 (65.5)	487.4 (197.2)
FBB–11	175.7 (71.1)	2.5 (1)	13.9 (5.6)	36.7 (14.9)	228.8 (92.6)
FBB–12	0 (0)	0 (0)	0 (0)	114.4 (46.3)	114.4 (46.3)
FBB–13	0 (0)	0 (0)	0 (0)	132.5 (53.6)	132.5 (53.6)
Total	1,112 (450)	6.8 (2.8)	31.7 (12.8)	1,859.1 (752.4)	3,009.7 (1,218)
KL–1	0 (0)	0 (0)	0 (0)	4 (1.6)	4 (1.6)
KL–2	0 (0)	0 (0)	0 (0)	20.4 (8.2)	20.4 (8.2)
KL–3	0 (0)	0 (0)	0 (0)	51 (20.6)	51 (20.6)
KL–4	0 (0)	0 (0)	0 (0)	68.6 (27.8)	68.6 (27.8)
KL–5	0 (0)	1.7 (0.7)	0 (0)	0 (0)	1.7 (0.7)
KL–6	0 (0)	2.5 (1)	0 (0)	1.1 (0.5)	3.6 (1.5)
KL–7	0 (0)	0 (0)	0 (0)	12.3 (5)	12.3 (5)
KL–8	0 (0)	1.8 (0.7)	0 (0)	9.7 (3.9)	11.5 (4.6)
KL–9	0 (0)	0 (0)	0 (0)	171.6 (69.4)	171.6 (69.4)
KL–10	0 (0)	0 (0)	0 (0)	17.9 (7.2)	17.9 (7.2)
KL–11	56.6 (22.9)	0 (0)	0.5 (0.2)	7.5 (3.1)	64.6 (26.2)
KL–12	21.5 (8.7)	0 (0)	0 (0)	119.7 (48.4)	141.2 (57.1)
KL–13	0 (0)	0 (0)	0 (0)	16.2 (6.6)	16.2 (6.6)
Total	78.1 (31.6)	6 (2.4)	0.5 (0.2)	500 (202.3)	584.6 (236.5)
WD–1	41.2 (16.7)	0 (0)	0 (0)	0 (0)	41.2 (16.7)
WD–2	0 (0)	0 (0)	0 (0)	12.2 (4.9)	12.2 (4.9)
WD–3	0 (0)	0 (0)	0 (0)	58.3 (23.6)	58.3 (23.6)
WD–4	0 (0)	0 (0)	5.8 (2.3)	3.5 (1.4)	9.3 (3.8)
WD–5	0 (0)	0 (0)	0 (0)	38.5 (15.6)	38.5 (15.6)
WD–6	77.1 (31.2)	0 (0)	0 (0)	8.4 (3.4)	85.4 (34.6)
WD–7	128.3 (51.9)	6 (2.4)	0 (0)	31.4 (12.7)	165.7 (67.1)
WD–8	77.6 (31.4)	0 (0)	0.5 (0.2)	135.1 (54.7)	213.2 (86.3)
WD–9	0 (0)	0 (0)	0 (0)	94.1 (38.1)	94.1 (38.1)
Total	324.2 (131.2)	6 (2.4)	6.3 (2.5)	381.5 (154.4)	718 (290.7)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens,* below.

Fender's blue butterfly

In total, we are designating 13 critical habitat units, each of which represents areas of habitat containing the features essential to the conservation of existing core populations of Fender's blue butterfly throughout its range. Each unit was occupied at the time of listing, and each unit represents a population that is currently isolated from other populations. To simplify unit descriptions, we have grouped units that with proper management and restoration, and may function as larger connected metapopulations.

Unit 1 for Fender's blue butterfly (Units FBB–1A and 1B)

Units FBB–1A and 1B encompass approximately 6.2 ac (2.5 ha) and 14.1 ac (5.7 ha), respectively, of private land occurring within northern Yamhill County and within the Oak Ridge habitat network. The Oak Ridge butterfly population is supported by three separate habitat patches, and the population has been monitored annually since 1993 (Hammond 2004, pp. 1, 3). The population has become much larger over the last 3 years, with an estimated 259 butterflies in 2004 (Hammond 2004, pp. 3, 34). FBB–1A represents the northernmost known occupied habitat patch in the current range of Fender's blue butterfly, and occurs along both the east and west sides of Oak Creek Road. FBB–1B is located approximately 0.7 miles (1.1 km) south of FBB–1A along both the east and west sides of Oak Creek Road, near the junction with Fairdale Road. The prairie habitat within FBB–1A and FBB–1B contains the PCEs essential to the conservation of this core population.

In recent years the Oak Ridge butterfly metapopulation has been evenly distributed among the three lupine patches. However, 10 years of monitoring reports for this population indicate that the number of individuals supported by each habitat patch has increased and decreased annually, with one habitat patch disproportionately supporting the population each year. The population fluctuations documented at these sites are attributed to roadside maintenance and presence of invasive species (Hammond 2002, pp. 3, 4; Hammond 2004, pp. 5, 33). The overall population has remained relatively stable, likely because its distribution among the three habitat patches provides opportunity for recolonization of impacted habitat patches (Hammond 2004, pp. 4–5). The prairie habitat within and between FBB–1A and 1B should be managed to allow for growth and expansion of this relatively small population in order to achieve and maintain the population.

Unit 1 for Fender's blue butterfly contains habitat features that are essential to the continued persistence of the species' core population throughout its range. Establishing stepping-stone habitat between FBB–1A and 1B will contribute to a more connected functioning metapopulation. However, at this time we do not have enough information to identify additional potential habitat for population expansion that may be necessary to meet delisting criteria. The habitat identified in FBB–1A and 1B has the features essential to the conservation of Fender's blue butterfly; has one of the largest remaining Fender's blue butterfly metapopulations; supports the butterfly's primary host plant, *Lupinus sulphureus* ssp. *kincaidii;* occurs at the northernmost extent of the species' range (Hammond 2004, p. 5); and is surrounded by prairie habitat available for population expansion.

Unit 2 for Fender's blue butterfly (Unit FBB–2)

Unit FBB–2 consists of approximately 51 ac (20.6 ha) of private lands within southern Yamhill County. The Gopher Valley butterfly population has been monitored annually since 1995 (Hammond 2004, p. 7), and has remained stable with a relatively low number of individuals consistently being reported (compared to other stable populations) (Hammond 2004, p. 35). The *Lupinus sulphureus* ssp. *kincaidii* habitat supporting this population occurs in two habitat patches scattered along the east and west sides of Gopher Valley Road. The largest distance separating lupine patches is approximately 0.12 miles (0.2 km). This population is threatened by the limited availability of nectar sources, presence of invasive species, and roadside maintenance activities.

With proper management of the prairie habitat surrounding the population located within the FBB–2 unit boundary, the habitat provides opportunities for population growth and expansion of both Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii.* Unit FBB–2 provides ease of Fender's blue butterfly movement between lupine habitat patches, and to all the features essential to the conservation of the species. Given the increased size of the lupine patch at the Deer Creek Park site (Hammond 2005, p. 8), this area will substantially contribute to the conservation of the Fender's blue butterfly. The habitat in FBB–2 has the features essential to the conservation of Fender's blue butterfly; one of the largest remaining Fender's blue butterfly populations in this portion of the butterfly's range; supports one of Fender's blue butterfly's primary host plants; provides the foundation for the existence of the species in this portion of its range; and has surrounding prairie habitat available for population expansion. In addition, Hammond (2005, pp. 8, 9) identified an expanding *L. sulphureus* ssp. *kincaidii* population at Deer Creek Park that now supports Fender's blue butterfly, increasing the size and long-term viability of this metapopulation.

Unit 3 for Fender's blue butterfly (Unit FBB–3)

Unit FBB–3 encompasses approximately 3.6 ac (1.5 ha) of primarily State-owned lands within northern Polk County. The Mill Creek butterfly population has been monitored annually since 1993 (Hammond 1993, pp. 18, 24; Hammond 2004, pp. 9, 10) and the overall number of individuals has increased over the past 3 years (Hammond 2004, p. 10). The lupine habitat supporting this population occurs in two patches scattered along the northeast and southwest sides of Highway 22, near the intersection with Mill Creek Road. The Oregon Department of Transportation (ODOT) owns most of the habitat supporting this population. Hammond (2004, p. 10) documented the threats to this unit as largely the presence of invasive grasses and shrubs that have overgrown the habitat, suppressing the lupine and *Erigeron decumbens* var. *decumbens* populations occupying this prairie remnant.

Habitat management activities implemented by ODOT in 2000 resulted in a large growth flush of *Lupinus sulphureus* ssp. *kincaidii* and an increased number of Fender's blue butterflies. This demonstrates that appropriate management of this site can provide for population growth and expansion. The habitat in unit FBB–3 supports the butterfly's primary host plant; the Fender's blue butterfly population size has been increasing over the last few years.

Unit 4 for Fender's blue butterfly (Units FBB–4A and 4B)

Units FBB–4A and 4B encompass approximately 748.4 ac (302.9 ha) and 416.1 ac (168.4 ha), respectively, of private and Federal land occurring within northern Polk County. Units FBB–4A and 4B are located adjacent to Highway 22 approximately 5.5 miles (8.8 km) northeast of the City of Dallas. An estimated 64 percent of the habitat encompassed within Unit FBB–4 occurs within the boundaries of the Service's Baskett Slough National Wildlife Refuge (Refuge) and approximately 36 percent of the prairie habitat occurs on adjacent private lands. Refuge biologists have documented the occurrence of the PCEs throughout the habitat within FBB–4A and 4B and also the Fender's blue butterfly's utilization of these areas (USFWS 2005, Smith, *in litt.*a, pp. 2, 3).

Many of the populations occurring in FBB–4A have been monitored annually since 1993 (Hammond 2004, p. 17), and the populations occupy ten separate patches of *Lupinus arbustus* which are

scattered across the unit. Between 1993 and 2001, habitat conditions steadily declined in many areas due to encroachment of grasses and brush in the upland prairie habitat (Hammond 2004, p. 18). Such habitat conditions adversely impacted not only the Fender's blue butterfly but also the population of *Erigeron decumbens* var. *decumbens* supported within FBB–4A. Recent survey results indicate that this metapopulation increased dramatically in size during 2003–2004 (Hammond 2004, p. 18). The total population size was estimated at 223 individuals in 2001 and approximately 1,368 individuals in 2004.

Unit FBB–4B is located approximately 0.12 miles (0.2 km) from FBB–4A with predominately agricultural lands occurring between the areas supporting this metapopulation. Unit FBB–4 (FBB–4A and 4B) supports the largest known Fender's blue butterfly metapopulation and the largest contiguous occupied prairie patch in the range of the species. This relatively large, contiguous prairie habitat is one of a few occupied remnants occurring on valley hillsides; most remaining populations occur on the valley floor. The open nature of the lands occurring between FBB–4A and 4B increases the potential for individuals to successfully disperse among habitat patches. The habitat in this unit has the features essential to the conservation of the species; it supports the largest known metapopulation, consists of several connected populations and provides an abundance of nectaring and dispersal habitat that allows for population growth and expansion.

Unit 5 for Fender's blue butterfly (Unit FBB–5)

Unit FBB–5 consists of approximately 12.3 ac (5 ha) of private lands within the central portion of Polk County. Unit FBB–5 is located near the junction of Highway 223 and Oakdale Avenue and largely falls within the City of Dallas' urban-growth boundary. Although Hammond (Hammond and Wilson 1993, pp. 10, 15; 2004, pp. 10, 12) has estimated the size of the Dallas population since 1991 (Hammond 1996, p. 13), he documents that he has been unable to access the site for over seven years and has been limited to visually-obstructed roadside observations. The Fender's blue butterfly needs special management in this unit because the population is threatened by the limited availability of food plants, presence of invasive species, and the impacts associated with the encroachment of urban development. Hammond (2004, p. 12) has documented the removal of several acres of Fender's blue butterfly habitat adjacent to this unit over the last ten years for residential development.

Appropriate management of the prairie habitat within FBB–5 should provide opportunity for population growth and expansion population. Unit FBB–5 provides the habitat containing the features essential for the continued persistence of this core population.

Unit 6 for Fender's blue butterfly (Units FBB–6A and 6B)

Units FBB–6A and 6B encompass approximately 2.4 ac (1 ha) and 15.9 ac (6.4 ha), respectively, of private lands occurring within southern Polk County. Unit FBB–6A is located along McCaleb Road near Cooper Creek and Unit FBB–6B is approximately 0.8 mile (1.4 km) south of FBB–6A along Monmouth Highway. Several Fender's blue butterfly populations historically occurring south of Dallas, Oregon, have been extirpated over the last decade (Hammond 2004, p. 12, 13). The habitat encompassed within FBB–6 (FBB–6A and 6B) supports the core butterfly population occurring at the southern end of the Dallas/Polk County functioning network and has been monitored annually since 1994 (Hammond 2005, p. 16).

Reintroductions of *Lupinus sulphureus* ssp. *kincaidii* or augmentations may be necessary at extirpated sites to provide stepping-stone habitat between FBB–5 and FBB–6. Unit FBB–6 provides the habitat containing the features essential to the persistence of this core population, as evidenced by an increasing butterfly population size over the last few years; it is one of the largest remaining Fender's blue butterfly populations in this portion of its range and it is one of two core, isolated populations providing the ''backbone'' of the Dallas/Polk County functioning network.

The larval host plant found in FBB–6B is *Lupinus albicaulis,* and based on roadside observations, Hammond (2004, p. 12) estimates several hundred butterflies occupy this habitat. Since *L. albicaulis* is a short-lived perennial, Hammond (2004, p. 12) documents that without periodic disturbance this butterfly population may disappear more quickly than populations using *L. sulphureus* ssp. *kincaidii* and *L. arbustus* as a host plant. However, *L. albicaulis* is the primary host plant for Puget blue butterfly (*Icaricia icarioides blackmorei*) and appears to serve the Puget blue quite well (Schultz, *in litt.*b, 2005). Additionally, another roadside population (McTimmonds Valley) of Polk County Fender's blue butterfly supported by *L. albicaulis* (Hammond 2002, p. 15) has remained stable for over a decade (Hammond 2004, pp. 13, 14).

FBB–6A supports a roadside population of *Lupinus sulphureus* ssp. *kincaidii* and is located between FBB–6B and a Fender's blue butterfly site where, in spite of surveys, individuals have not been seen for 2 years. FBB–6A provides stepping-stone habitat for Fender's blue butterfly..

Units 7, 8, and 9 for Fender's blue butterfly (Units FBB–7, FBB–8, and FBB–9)

Units FBB–7, FBB–8, and FBB–9 collectively represent the areas of habitat containing the features essential to the conservation of the Fender's blue butterfly populations in northern Benton County. This area is located in the central region of the species' range and consists of two large and one medium-sized populations that are isolated from one another. The availability of habitat in each of these units provides opportunity for population growth and expansion, with appropriate stepping-stone habitat conditions available for facilitating movement within units.

Each of these units has features that are essential to the conservation of the species because there is surrounding prairie habitat available for metapopulation expansion, and the units collectively support three of the largest remaining Fender's blue butterfly populations in this portion of the species' range. Additionally, these populations are located in relatively close proximity to one another, thus increasing the potential for interaction between populations. Stepping-stone habitat between FBB–7, FBB–8, and FBB–9 will likely be necessary for these currently isolated populations to function as a larger metapopulation. The habitat included within each of these units provides the foundation for long-term persistence of each respective isolated population.

Unit 7 for Fender's blue butterfly (Unit FBB–7)

Unit FBB–7 consists of approximately 11.5 ac (4.6 ha) of private and State lands within Benton County. The habitat in this unit, uniquely located in a meadow surrounded by forested land, supports the second largest known Fender's blue butterfly population and occurs in McDonald Forest located off Oak Creek Road. Approximately 15 percent of the habitat supporting the PCEs within FBB–7 occurs on Oregon State University lands and the remaining 85 percent occurs on private lands. This Fender's blue butterfly population has been monitored

annually since 1993 (Hammond 2004, pp. 26–27) and recent studies indicate that this population has the highest chance of long-term persistence based on population trend data (Schultz *et al.* 2003, pp. 67–68).

This population of Fender's blue butterfly is threatened by the encroachment of invasive grasses and succession to forest, especially in narrow areas of the meadow where tree encroachment could block-off portions of the habitat and isolate portions of the populations (Hammond 2004, p. 27). Although a management plan has not been completed for this unit, the landowner is interested in maintaining the prairie habitat for the butterfly. In cooperation with Oregon State University scientists, the landowner is studying appropriate management techniques for controlling invasive *Brachypodium sylvaticum* (false brome). Unit FBB–7 provides a diverse composition of high quality habitat utilized by all life stages of the Fender's blue butterfly.

Unit 8 for Fender's blue butterfly (Unit FBB–8)

Unit FBB–8 encompasses approximately 716.7 ac (290 ha) of private lands within Benton County. This unit is located in Wren, Oregon, between Kings Valley Highway, Cardwell Hill Road and Blakesly Creek Road, approximately 2 miles (3.2 km) southwest of Unit FBB–7. Several of the Fender's blue butterfly populations occupying this unit have been surveyed regularly since 1991 (Hammond and Wilson 1993, p 10, 22; Hammond 1997, p. 6; Hammond 1999, p. 20; Hammond 2001, p. 22; Hammond 2003, pp. 22, 23; Hammond 2004, pp. 23–25; Hammond 2005, p. 26).

A new Fender's blue butterfly population has been documented using a large population of *Lupinus sulphureus* ssp. *kincaidii* located between two of the regularly monitored populations of Fender's blue butterfly (Hammond 2004, p. 23). The powerline right-of-way that runs across Unit FBB–8 appears to play a significant role in Fender's blue butterfly dispersal between the *L. sulphureus* ssp. *kincaidii* populations scattered across this large contiguous high quality prairie (USFWS 2004a, 2004c). The relatively ''pristine'' (Hammond 2004, p. 23), large prairie habitat included within Unit FBB–8 contains the features essential for all life stages of this Fender's blue butterfly metapopulation.

Unit 9 for Fender's blue butterfly (Unit FBB–9)

Unit FBB–9 consists of approximately 48.5 ac (19.6 ha) of private lands located north of Philomath. The habitat occurs primarily to the south of West Hills Road and to the west of 19th Street. The Greenbelt Land Trust recently obtained a conservation easement for 51 percent of the prairie habitat supporting this population. Adult Fender's blue butterfly individuals have been observed using the nectaring habitat in this remnant prairie and many of the *Lupinus sulphureus* ssp. *kincaidii* populations scattered throughout the unit. The Fender's blue butterfly population utilizing the eastern portion of this site has been monitored annually since 1999 (Hammond 2005, p. 34), with the first observation of individuals occurring in 1992 (Hammond and Wilson 1993, pp. 10, 21). Threats to this site include encroachment of invasive species, trees and shrubs, and a small portion of the Unit FBB–9 is located along West Hills Road and impacted by roadside maintenance activities. Unit FBB–9 provides the habitat features essential for all life stages of this butterfly population, and is one of the core populations..

Units 10, 11, and 12 for Fender's blue butterfly (Unit FBB–10, FBB–11, and FBB–12)

Units FBB–10, FBB–11, and FBB–12 support the core populations of the species in the southern portion of their range. Collectively, these units provide the foundation for the West Eugene habitat network.

This area supports three core populations that are mostly isolated from one another (greater than 0.93 miles (1.5 km) from the nearest occupied lupine patch) with stepping-stone populations located between core populations. The availability of habitat within each of these units provides opportunity for population growth and expansion, as well as areas appropriate for stepping-stone habitat that will facilitate ease of movement within units. Each of these units provide habitat with features essential to the conservation of the species; they collectively support two of the largest remaining Fender's blue butterfly metapopulations (FBB–10 and FBB–12); the two metapopulations are located in relatively close proximity to one another providing a unique opportunity to reestablish a larger connected set of populations that functions as a viable metapopulation; the butterfly populations are all supported by *Lupinus sulphureus* ssp. *kincaidii*; and there is surrounding prairie habitat available for population expansion. Stepping-stone habitat in FBB–11 is necessary to provide connectivity among core butterfly populations to ensure the long-term persistence of this metapopulation.

Unit 10 for Fender's blue butterfly (Units FBB–10A, 10B, 10C, 10D, and 10E)

Unit FBB–10A–E encompass approximately 487.4 ac (197.2 ha) of prairie habitat in Lane County, Oregon. The prairie habitat included within FBB–10A–E occurs on BLM and Corps land (63 percent), private lands (33 percent), and County lands (4 percent). Unit FBB–10A, 10B, and 10C collectively support two core metapopulations of Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* that have been surveyed annually since 1993 (Severns 2004, p. 2; Fitzpatrick 2005, p. 2). Within FBB–10A, 84 percent of the area occurs on Corps property located near Shore Lane, NE Fern Ridge Reservoir.

The populations occupying FBB–10A require tall-oat grass (*Arrhenatherum elatius*) management because this invasive grass now covers 100 percent of the habitat supporting all six populations (Severns 2004, p. 1). Nevertheless, the 2004 population surveys reported the largest number of butterflies ever observed at the site; the population size more than doubled between 2003 and 2004. The Army Corp of Engineers has reestablished populations of *Lupinus sulphureus* ssp. *kincaidii* between Fender's blue butterfly populations located within this unit to provide butterfly stepping-stone habitat and increase connectivity. In 2001, a small patch of *L. sulphureus* ssp. *kincaidii* was planted on the side of a spoil mound, on the south side of the Amazon Canal. The Fender's blue butterfly was documented using this lupine patch during the 2004 field season. This demonstrates that the recommended stepping-stone reserve design (Schultz 1998, p. 291) will allow for successful dispersal between core populations occurring on Corps lands in FBB–10A and on BLM lands in FBB–10C (Severns 2004, p. 1). The stepping-stone habitat is important to establishing a viable, connected Fender's blue butterfly metapopulation (McIntire *et al.* in review, pp. 1–47; Severns 2004, p. 1).

Portions of the habitat occurring on BLM land within FBB–10C are severely threatened by the closed canopy cover of *Rubus armeniacus* that has overtaken large areas of the site (Kaye 2004). Fender's blue butterfly populations

supported by the habitat within FBB–10B would benefit from adult nectar source augmentations (Severns 2004, p. 1). Habitat management will be necessary to increase the size and connectivity of butterfly populations by restoring additional stepping-stone habitat patches that enhance the connection between the core populations occupying FBB–10A and FBB–10C (McIntire *et al.* in review, pp. 1–47). Units FBB–10D and 10E provide essential features for the conservation of the species and stepping-stone habitat to populations occurring in Units FBB–11 and FBB–12 (McIntire *et al.* in review, pp. 1–47). Unit FBB–10A–E provides the habitat containing the features essential for two butterfly populations. This unit includes one of the most extensive contiguous prairie remnants, which increases the potential for connectivity between these two core populations. This prairie remnant provides the foundation for reestablishing a large functioning metapopulation within the West Eugene Habitat Network.

Unit 11 for Fender's blue butterfly (Units FBB–11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, and 11I)

Unit FBB–11A consists of 15.5 ac (6.3 ha) of privately owned land. FBB–11B includes approximately 14 ac (5.7 ha) of primarily BLM land (94 percent) with 6 percent occurring on private lands. FBB–11C encompasses approximately 22 ac (9 ha) with 94 percent occurring on BLM land and 6 percent on private lands. FBB–11D encompasses approximately 29.3 ac (11.9 ha) with 68 percent on federally owned lands and 32 percent on private lands. FBB–11E consists of approximately 4.4 ac (1.8 ha) of land entirely owned by Lane County. FBB–11F encompasses approximately 28.8 ac (11.6 ha) with 80 percent on federally owned lands, 9 percent on state owned lands and 11 percent on private lands. FBB–11G encompasses approximately 4.6 ac (1.9 ha) with 67 percent on Federal lands and 33 percent on private lands. FBB–11H consists of approximately 58.6 ac (23.7 ha) with 97 percent on Federal lands, less than 2 percent on private lands, and less than 1 percent on county lands. FBB–11I encompasses approximately 51.5 ac (20.8 ha) with 75 percent occurring on Federal lands and 25 percent on private lands. Most of the lupine populations scattered across the prairie habitat within this unit are relatively small, but the habitat supporting them is important to the long-term viability of a larger functioning Fender's blue butterfly metapopulation in this southern portion of the species range (McIntire *et al.* in review, pp. 1–47).

The area included within this unit provides needed stepping-stone habitat between the BLM/Army Corp of Engineers metapopulation to the northwest and The Nature Conservancy (TNC) metapopulations to the southeast (McIntire *et al.* in review, pp. 1–47). Local land managers recently surveyed this area to identify habitat patches suitable for reestablishing *Lupinus sulphureus* ssp. *kincaidii* populations as stepping-stones for the Fender's blue butterfly (McIntire *et al.* in review, pp. 1–47). The areas identified occur within this unit boundary will need to be enhanced to increase the size and connectivity of butterfly populations by restoring patches between core metapopulations within FBB–10 and FBB–12 (McIntire *et al.* in review, pp. 1–47). Unit FBB–11 (FBB–11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, and 11I) provides the features essential for all life stages of this butterfly population because it includes habitat to reestablish connectivity between two of the largest remaining metapopulations, and it increases viability of all populations in this portion of the species' range. The habitat included within FBB–11 is important for reestablishing connectivity between existing metapopulations and providing for a large functioning metapopulation (McIntire *et al.* in review, pp. 1–47).

Unit 12 for Fender's blue butterfly (Units FBB–12A and 12B)

Units FBB–12A and 12B encompasses approximately 114.4 ac (46.3 ha) near the intersection of Bailey Hill Road and Bertelson Road, with the majority of this land occurring on TNC property. The *Lupinus sulphureus* ssp. *kincaidii* and Fender's blue butterfly populations are scattered across the 508 ac (206 ha) of remnant prairie known as the Willow Creek Natural Area (Fitzpatrick 2005, pp. 2, 27). FBB–12A and 12B function as a metapopulation and collectively represent the third largest Fender's blue butterfly metapopulation across the range of the species. The populations occurring within this unit have been monitored annually since 1993 (Fitzpatrick 2005, p. 2).

The habitat within FBB–12A and 12B is threatened by exotic vegetation and succession to woody vegetation. To ensure a viable, connected metapopulation in west Eugene, the area within this unit should be enhanced to provide opportunity for population growth and expansion (McIntire *et al.* in review, pp. 1–47). Unit FBB–12 (FBB–12A and 12B) provides habitat features essential to the conservation of the species; it includes some of the highest quality remaining upland prairie, and supports the largest core metapopulation in this portion of the species range.

Unit 13 for Fender's blue butterfly (Unit FBB–13):

Unit FBB–13 encompasses approximately 132.5 ac (53.6 ha) of private land that supports several patches of primarily *Lupinus arbustus* scattered across the remnant prairie. The Fender's blue butterfly population occupying this unit has been monitored since 1993 (Fitzpatrick 2005, p. 7). This habitat supports one of the largest remaining butterfly populations and the highest diversity of native plants documented for Fender's blue butterfly habitat (Hammond 1994, p. 45). This butterfly population occurs on a valley hillside and is supported by habitat that appears to be stable climax grassland which is very different than the populations growing on the valley floor (Hammond and Wilson 1993, p. 45; Hammond 1994, p. 45). Hammond and Wilson (1993, p. 45) indicate this population should be regarded as a distinct ecological segregate that should be preserved as a unique population. The size, quality and its unique ecological conditions make this unit important to the conservation of the species.

Lupinus sulphureus ssp. *kincaidii*

In total, we are designating 13 critical habitat units, each of which represents areas of habitat containing the features essential to the conservation of core populations of *Lupinus sulphureus* ssp. *kincaidii* throughout its range. To simplify unit descriptions, we have grouped units that are within pollinator distance of one another, and that may function as larger, connected metapopulations with proper management and restoration.

Unit 1 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–1)

Unit KL–1 consists of approximately 4 ac (1.6 ha) of private land in Lewis County, Washington. There are only a few small populations of *Lupinus sulphureus* ssp. *kincaidii* remaining in Washington. These populations are highly disjunct from the Willamette Valley populations with an estimated 81 miles (131 km) separation. Unit KL–1 includes the highest quality prairie habitat supporting *L. sulphureus* ssp. *kincaidii* in this northernmost extent of its range. This lupine patch is located approximately 0.8 km from lands supporting three lupine patches that are being managed to promote the

conservation of the species. The prairie habitat found in Lewis County, Washington, will likely need to be actively managed to expand the current *L. sulphureus* ssp. *kincaidii* populations and re-establish lupine patches in relative close proximity (3–5 miles (5–8 km)) to one another. At this time, we do not have enough information to identify additional potential habitat for population expansion, which will likely be necessary for these populations to function as a viable metapopulation. The habitat in this unit has the features essential to the conservation of *L. sulphureus* ssp. *kincaidii*; it supports one of the remaining *L. sulphureus* ssp. *kincaidii* populations in the northern-most extent of the species' range; is close enough to other lupine patches to function as a larger metapopulation; and there is surrounding prairie habitat available for population expansion.

Unit 2 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–2 A and 2B)

Unit KL–2A and 2B encompass approximately 6.25 ac (2.5 ha) and 14.1 ac (5.7 ha) respectively, of private land in northern Yamhill County. KL–2A supports *Lupinus sulphureus* ssp. *kincaidii* patches along both the east and west sides of Oak Creek Road. KL–2B is located approximately 0.68 miles (1.1 km) south of KL–2A along both the east and west sides of Oak Creek Road, near the junction with Fairdale Road. Yamhill County is responsible for roadside maintenance activities along Oak Creek Road that may adversely impact these plant populations. The prairie habitat within KL–2 (KL–2A and 2B) includes the PCEs essential to the conservation of this core population. Habitat management will be necessary to maintain the short-grass stature of the native prairie and provide the habitat conditions essential to the conservation of *L. sulphureus* ssp. *kincaidii*. The Fender's blue butterfly uses *L. sulphureus* ssp. *kincaidii* at this site as a primary host plant and 100 percent of Unit KL–1 is included within Unit FBB–1.

Threats to Unit KL–2 include impacts from the timing and extent of road maintenance activities, domestic livestock management that reduces *Lupinus sulphureus* ssp. *Kincaidii* viability and distribution, and the presence of invasive species (Hammond 2004, p. 5, 33). The distribution of habitat patches in relatively close proximity to each other has likely contributed to the persistence of this population. Impacts to this population over the years have typically affected only one habitat patch at any given time since they are scattered across the prairie habitat. Severns (2003a, p. 227) indicates that the stepping-stone reserve design recommended for the conservation of Fender's blue butterfly will also benefit *L. sulphureus* ssp. *kincaidii* populations. Increasing the number of lupine patches in close proximity to one another will likely increase the chances for outcrossing pollination.

In order for the species to persist over the long term, this population will likely need to function with other populations to form a more viable metapopulation. At this time we do not have enough information to identify additional potential habitat for population expansion that will be necessary for this metapopulation to meet delisting criteria. Although there are other reported occurrences in the general vicinity those sites do not meet the minimum patch size, are highly degraded, or are restricted by roads without potential for population expansion, and thus are not considered to have the features essential to the conservation of this population. Unit KL–2 provides the habitat features essential for the continued persistence of a core population in this portion of the species range. Even with a relatively small population size, habitat within Unit KL–2 supports one of the largest remaining *Lupinus sulphureus* ssp. *kincaidii* populations that represents the northernmost Willamette Valley population, and provides surrounding prairie habitat for population expansion.

Units 3 and 4 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–3 and KL–4)

Units KL–3 and KL–4 each support a *Lupinus sulphureus* ssp. *kincaidii* population that collectively, may function as a larger metapopulation. These units are located approximately 2.3 miles (3.7 km) apart and likely have rare cross-pollination events. Active management may be necessary to both enhance these populations and identify opportunities to increase pollinator connectivity among units. At this time we do not have enough information to identify additional potential habitat for population expansion, which will likely be necessary for these populations to function as a larger metapopulation. Although there are other small, mostly roadside populations recorded within the estimated 5 miles (8 km) pollinator distance, most are highly degraded, presumed extinct, or too small to meet our selection criteria, and are not proposed for critical habitat. Each of these units provide habitat that have the features essential to the conservation of the species; they each support the largest remaining populations in this portion of their range; are located in relatively close proximity to one another; have increasing potential for cross pollination and increased reproductive success; and there is surrounding prairie habitat available for population expansion.

Unit 3 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–3)

Unit KL–3 consists of approximately 51 ac (20.6 ha) of private lands within Yamhill County. The *Lupinus sulphureus* ssp. *kincaidii* population is comprised of several populations scattered along the east and west sides of Gopher Valley Road near its intersection with Dupee Road. Yamhill County is responsible for roadside maintenance activities along Gopher Valley Road, which may adversely impact this population of *L. sulphureus* ssp. *kincaidii*. The largest distance separating lupine populations is approximately 0.12 mi (0.2 km). This population is threatened by the presence of invasive species; the relatively small, isolated nature of the population; and impacts associated with roadside maintenance activities. The Fender's blue butterfly uses *L. sulphureus* ssp. *kincaidii* at this site as a primary host plant, and 100 percent of Unit KL–3 is included in Unit FBB–2.

The prairie habitat within KL–3 should be managed to allow for growth and expansion of this relatively small population. Increasing the number of *Lupinus sulphureus* ssp. *kincaidii* patches in close proximity to one another will increase the chances for outcrossing pollination, which is essential to the conservation of this species. Because of the limited availability of supporting prairie habitat, this population will need to function with other populations as a larger, more viable metapopulation in order to persist over the long term. This prairie habitat should be actively managed in order to maintain the short-grass prairie stature essential for the conservation of *L. sulphureus* ssp. *kincaidii* and provide opportunity for population growth and expansion. One peer reviewer provided us with additional information that there is prairie habitat supporting a ''large area of *L. sulphureus* ssp. *kincaidii*'' within Deer Creek Park, which is owned by Yamhill County. Additionally, the peer reviewer noted that the lupine patch has been growing and expanding rapidly over the last few years. Although not included within the critical habitat designation (*see* comment/response #1), this population of *L. sulphureus* ssp. *kincaidii* substantially contributes to the metapopulation in this portion of the

species range and increases the overall viability of this metapopulation.

Unit 4 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–4A and 4B)

Unit KL–4A and 4B consists of approximately 68.6 ac (27.8 ha) of private lands in Yamhill County and is located west of Muddy Valley Road and south of Eagle Point Road. The *Lupinus sulphureus* ssp. *kincaidii* populations are relatively small and scattered across this large, contiguous prairie remnant. The *L. sulphureus* ssp. *kincaidii* population within this unit boundary is one of only a few populations supported by extensive areas of the short-grass prairie necessary for population growth and expansion. Unit KL–4 (KL–4A and 4B) provides habitat with features essential for the continued persistence of this core population, and, together with the habitat included in Unit KL–3, these areas are fundamental to the continued persistence of a viable metapopulation in this portion of the species' range.

Units 5 and 6 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–5 and KL–6)

Units KL–5 and KL–6 are both primarily State-owned lands managed by the ODOT. Each unit supports populations of *Lupinus sulphureus* ssp. *kincaidii* in this portion of the species' range that collectively function as a larger metapopulation. These units are both relatively small, but are two of the largest remaining populations in this portion of the species' range. In addition, they are located approximately 5 mi (8 km) from one another, within the estimated pollinator distance, and therefore may be functioning as a larger, more viable metapopulation. Since these populations are just within the pollinator maximum dispersal distance, cross pollination between habitat patches is likely a rare event. Active management will likely be necessary to both enhance these populations and identify opportunities to increase pollinator connectivity between units. At this time, we do not have enough information to identify additional potential habitat for population expansion, which will likely be necessary for these populations to regularly function as a larger metapopulation. Although there are other small, mostly roadside populations recorded within the estimated 5 mi (8 km) pollinator distance, most are highly degraded, presumed extirpated, or too small to meet our selection criteria and not expected to contribute towards the long-term persistence of this species. KL–5 and KL–6 provide habitat with the features essential to the conservation of the species; they support the largest remaining populations in this portion of their range; are located in relatively close proximity to one another, increasing potential for cross pollination and increased reproductive success; and have surrounding prairie habitat available for population expansion.

Unit 5 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–5)

Unit KL–5 encompasses approximately 1.7 ac (0.7 ha) of ODOT land in southern Yamhill County and is located south of State Highway 18, east of Ballston Road, and approximately 0.6 mi (1 km) south of the Yamhill River. Although the overall prairie remnant supporting the population is small, the population of *Lupinus sulphureus* ssp. *kincaidii* it supports a substantial lupine popultion, with over a 1,000 individuals reported to occupy the unit (Gisler *in litt.,* p.1). Special management should focus on establishing or managing prairie habitat between KL–5 and KL–6 to allow for growth and expansion of the overall metapopulation. Severns (2003a, p. 227) indicates that the stepping-stone reserve design recommended for the conservation of the Fender's blue butterfly will also benefit *L. sulphureus* ssp. *kincaidii* populations. Increasing the number of lupine patches in close proximity to one another will likely increase the chances for outcrossing pollination, which will increase long-term viability of the metapopulation. Unit KL–5 provides the habitat containing the features essential for the continued persistence of this core population and, together with the habitat included in Unit KL–6, is fundamental to the continued persistence of a functioning metapopulation in this portion of the species' range.

Unit 6 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–6)

Unit KL–6 encompasses approximately 3.6 ac (1.5 ha) of primarily ODOT land in northern Polk County. The *Lupinus sulphureus* ssp. *kincaidii* population occurs in two patches scattered along the northeast and southwest sides of Highway 22, near the intersection with Mill Creek Road. The Fender's blue butterfly uses *L. sulphureus* ssp. *kincaidii* at this site as a primary host plant, and 100 percent of Unit KL–6 is included in Unit FBB–3. Additionally, a small population of *Erigeron decumbens* var. *decumbens* occurs at this site. Hammond (2004, p. 10) documented that invasive grasses and shrubs have suppressed the *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* populations occupying this prairie remnant.

Although Unit KL–6 has limited available prairie habitat directly adjacent to the area currently supporting the species, mowing activities implemented by ODOT in 2000 resulted in an increase of *Lupinus sulphureus* ssp. *kincaidii* and Fender's blue butterfly. This demonstrates that appropriate management of this site provides an opportunity for population growth and expansion. Unit KL–6 provides habitat containing the features essential for the continued persistence of the core population, strengthens this core reserve area together with Unit KL–5, and is fundamental to the continued persistence of a functioning metapopulation in this portion of the species' range. It is likely that other populations occur in the near vicinity because the surrounding area is fairly undeveloped and much of this land has never been surveyed for *L. sulphureus* ssp. *kincaidii.*

Unit 7 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–7)

Unit KL–7 consists of approximately 12.3 ac (5 ha) of private lands in central Polk County. This unit is located near the junction of Highway 223 and Oakdale Avenue, and largely falls within the City of Dallas urban-growth boundary. The Fender's blue butterfly uses *Lupinus sulphureus* ssp. *kincaidii* at this site as a primary host plant, and 100 percent of Unit KL–7 is included in Unit FBB–5. This butterfly population was monitored consistently between 1993 and 1997, but not again until May 2004. During the May 2004 field season, we met with the private landowner who owns one of the land parcels currently supporting the population of *L. sulphureus* ssp. *kincaidii* occurring within this unit boundary. We were able to document the extent of the area supporting the PCEs across the landscape and determined that a significant portion of the area historically supporting *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly populations has been developed into residential lots. Hammond (2004, p. 12) documented the removal of several acres of habitat over the last 10 years that had historically supported this population and these areas are not included within the critical habitat unit. This population is threatened by the presence of invasive species and the impacts associated with the encroachment of urban development. However, ongoing habitat management activities should reduce the threats of invasive species and provide opportunity for population

growth and expansion. The landowner we met with in 2004 has entered into a Partners for Fish and Wildlife Agreement (USFWS 2004c) and, in cooperation with Refuge staff, has agreed to manage the portion of the Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* habitat occurring on his property.

The area identified within the boundaries of KL–7 includes the features essential to the conservation of this core population in this portion of the species' range. Because of the limited availability of supporting prairie habitat, this population will likely need to function with other populations as a larger, viable metapopulation in order for the species to persist over the long term. At this time, we do not have enough information to specifically identify which surrounding areas supporting the PCEs will likely be necessary for the long-term viability of this larger metapopulation. The open areas to the south support roadside prairie remnants historically occupied by *Lupinus sulphureus* ssp. *kincaidii* populations that have been extirpated over the last 10 years (Hammond 2004, p. 12, 13).

Units 8, 9, and 10 of *Lupinus sulphureus* ssp. *kincaidii* (Units KL–8, KL–9, and KL–10)

Units 8, 9, and 10 each support a *Lupinus sulphureus* ssp. *kincaidii* population that collectively, may function as a larger metapopulation. These units are located approximately 3.7 mi (6 km) apart and may, at least occasionally, be cross-pollinated by insects. Active management will likely be necessary to both enhance these populations and identify opportunities to increase pollinator connectivity between units. Each of these units contain habitat that have the features essential to the conservation of the species; they each support a relatively large population; they are located in relatively close proximity to one another, thus increasing potential for cross-pollination and increased reproductive success; and there is surrounding prairie habitat available for population expansion. At this time, we do not have enough information to identify additional potential habitat for population expansion, which may be necessary for these populations to regularly function as a larger metapopulation. Although there are other small, mostly roadside populations recorded within the estimated 5 mi (8 km) pollinator distance, most are highly degraded, presumed extirpated, or too small to meet our selection criteria and not expected to contribute towards the long-term persistence; they are therefore not designated as critical habitat.

Unit 8 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–8)

Unit KL–8 consists of approximately 11.5 ac (4.6 ha) of private and State lands in Benton County. This unit occurs in McDonald Forest located off Oak Creek Road and supports one of the highest quality remaining prairies. The *Lupinus sulphureus* ssp. *kincaidii* occupying this unit is the primary host plant of the Fender's blue butterfly; this site is the second largest known Fender's blue butterfly population, and 100 percent of Unit KL–8 is included in Unit FBB–7. Approximately 14 percent of the lands supporting the PCEs within this unit occurs on Oregon State University lands, and the remaining 86 percent occurs on private lands. The patches of *L. sulphureus* ssp. *kincaidii* occupying Unit KL–8 are scattered across a large contiguous prairie habitat, which is one of few occupied remnants occurring on valley hillsides. Unit KL–8 provides high quality upland prairie habitat, including the short-grass stature necessary to maintain the openness of the habitat. However, this population is threatened by the encroachment of invasive grasses, particularly *Brachypodium sylvaticum,* and succession to forest. In narrow areas of the meadow, forest succession is particularly problematic because the tree encroachment could block-off portions of the habitat and reduce connectivity between lupine patches, thus decreasing the potential for successful outcrossing pollination. Although a management plan for this area has not been completed, the unit has been managed for several years to enhance populations of both the Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii*.

Special management of these lands is needed . Unit KL–8 provides habitat that has the features essential to the conservation of this species; it has one of the largest remaining contiguous prairie patches supporting a large population of *Lupinus sulphureus* ssp. *kincaidii*; there is surrounding prairie habitat available for population expansion; and this subpopulation increases the long-term viability of neighboring populations by contributing individuals to the overall metapopulation.

Unit 9 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–9)

Unit KL–9 encompasses approximately 171.6 ac (69.4 ha) of private lands within Benton County. This unit is located in Wren, Oregon, between Kings Valley Highway, Cardwell Hill Road, and Blakesly Creek Road, approximately 2 mi (3.2 km) southwest of Unit KL–8. The Fender's blue butterfly uses the *Lupinus sulphureus* ssp. *kincaidii* scattered across this unit as a primary host plant, and 100 percent of Unit KL–9 is included within Unit FBB–8. The estimated average distance between lupine patches in Unit KL–9 is 0.6 mi (1 km), providing excellent habitat conditions for outcrossing pollination between lupine individuals.

This historic population was first documented in 1937 (Hammond 2004, p. 23), and new information has recently been identified about the distribution of the larger *Lupinus sulphureus* ssp. *kincaidii* metapopulation supported across this prairie remnant (Hammond 2004, p. 23). A new patch of *L. sulphureus* ssp. *kincaidii*, also occupied by the Fender's blue butterfly, has been documented within this prairie remnant and is located between the two populations that have been monitored annually (Hammond 2004, p. 23). The relatively ''pristine'' (Hammond 2004, p. 23), large, prairie habitat included within this unit provides the short-grass prairie stature required for expansion of the *L. sulphureus* ssp. *kincaidii* population. The habitat identified in Unit KL–9 has the features essential to the conservation of this species; it is one of the largest remaining contiguous prairie patches supporting a large population of *L. sulphureus* ssp. *kincaidii*; it provides opportunity for population expansion; and this subpopulation increases the long-term viability of neighboring populations by contributing individuals to the overall metapopulation.

Unit 10 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–10)

Unit KL–10 consists of approximately 17.9 ac (7.2 ha) of private lands within Benton County and is located north of Philomath, with the habitat occurring primarily to the south of West Hills Road and to the west of 19th Street. This unit provides the features essential to the *Lupinus sulphureus* ssp. *kincaidii* population that serves as the primary host plant for a large population of Fender's blue butterfly. All of the area within Unit KL–10 is included in Unit FBB–9. The Greenbelt Land Trust recently obtained a conservation easement for the habitat and began managing prairie to enhance the areas supporting the features essential to the conservation of both the *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly populations.

Threats to this site include encroachment of invasive species, trees, and shrubs. A small portion of Unit KL–10 is located along West Hills Road and is impacted by roadside maintenance activities. The long-term viability of this unit will depend on continued active management that maintains the short-grass prairie habitat within this unit and provides opportunity to expand the existing population of *Lupinus sulphureus* ssp. *kincaidii*. The habitat identified in Unit KL–10 has the features essential to the conservation of this species; it is one of the highest quality remaining prairie patches supporting *L. sulphureus* ssp. *kincaidii*; there is surrounding prairie habitat available for population expansion; and this subpopulation increases the long-term viability of neighboring populations by contributing individuals to the overall metapopulation.

Units 11 and 12 of *Lupinus sulphureus* ssp. *kincaidii* (Units KL–11 and KL–12)

Units KL–11 (KL–11A, 11B, 11C, 11D, and 11E) and KL–12 (KL–12A, 12B, 12C, 12D, and 12E) collectively represent a series of upland habitat patches distributed across West Eugene interspersed with wet prairie habitat patches. This type of extensive network of wetland and upland prairie does not occur anywhere else in the Willamette Valley. Units KL–12A, 12B and 12C collectively provide a series of stepping-stone habitat patches between *Lupinus sulphureus* ssp. *kincaidii* populations supported by habitat within KL–12D and KL–12E and those populations occupying Unit KL–11. Increasing the number of lupine patches in close proximity to one another increases the chances for outcrossing pollination, which is required for successful reproduction. Both of these units contain habitat with the features essential to the conservation of the species; they each support the largest remaining *L. sulphureus* ssp. *kincaidii* populations in this portion of their range; they are located in relatively close proximity to one another, thus increasing potential for cross pollination and increased reproductive success; and there is substantial surrounding prairie habitat available for population expansion. Although there are other small, mostly roadside populations recorded within the estimated 5 mi (8 km) pollinator distance, most are highly degraded, presumed extinct, or too small to meet our selection criteria, and therefore are not designated as critical habitat.

Unit 11 of *Lupinus sulphureus* ssp. *kincaidis* (Unit KL–11A, 11B, 11C, 11D, and 11E)

Unit KL–11 encompasses approximately 64.6 ac (26.2 ha) of prairie habitat distributed across Federal and private lands in Lane County. This unit is located in West Eugene, near the Fern Ridge Reservoir, just south of Clearlake Road, and on both the east and west sides of Fir Butte Road. The area included in Units KL–11A, 11B, 11C, 11D, and 11E, collectively represent areas containing habitat with the features essential to the conservation of a currently functioning *Lupinus sulphureus* ssp. *kincaidii* metapopulation. The Fender's blue butterfly uses *L. sulphureus* ssp. *kincaidii* within this unit as a primary host plant and 100 percent of Unit KL–11 is included in Unit FBB–10.

The habitat within Unit KL–11 primarily occurs on Federal land managed by the BLM and Army Corp of Engineers, with 12 percent occurring on private land. The *Lupinus sulphureus* ssp. *kincaidii* populations occurring in KL–11A, 11B, 11C, and 11D are scattered across the area and form separate habitat patches that encircle the northeast edge of the Fern Ridge Reservoir. Although the Army Corp of Engineers actively manages most of the habitat supporting these populations, they all remain threatened by the presence of invasive grasses, predominantly *Arrhenatherum elatius* (tall oat grass), which limits the overall diversity of the site and the opportunity for population growth (Severns 2004, p. 1). *Lupinus sulphureus* ssp. *kincaidii* occupying KL–11E is sparsely distributed across the entire subunit, making it difficult to identify separate *L. sulphureus* ssp. *kincaidii* patches. This subunit is severely threatened by the presence of exotic species, primarily *Rubus armeniacus.* Although Unit KL–11 does not provide the highest quality habitat, it manages to support some of the largest remaining populations of *L. sulphureus* ssp. *kincaidii* in this portion of its range. The habitat included within Unit KL–11 contains the features essential for the continued persistence of this metapopulation.

Unit 12 of *Lupinus sulphureus* ssp. *kincaidii* (Units KL–12A, 12B, 12C, 12D, and 12E):

Unit KL–12 encompasses approximately 141.2 ac (57.1 ha) of prairie habitat distributed across Federal and private lands in Lane County. This unit is in west Eugene and located north of Bailey Hill Road and west of Bertelsen Road. This unit primarily occurs on lands owned by TNC and the BLM, with 4 percent occurring on private lands. The area included in KL–12A, 12B, 12C, 12D, and 12E, collectively represents habitat with the features essential to the conservation of a functioning *Lupinus sulphureus* ssp. *kincaidii* metapopulation. The Fender's blue butterfly uses the *L. sulphureus* ssp. *kincaidii* occupying this unit as a primary host plant, and 100 percent of Unit KL–12 is included in Units FBB–11 and FBB–12. KL–12D and 12E are owned by TNC and support the highest quality upland prairie remaining in this portion of the species' range. *Lupinus sulphureus* ssp. *kincaidii* is scattered across the prairie habitat in KL–12D and 12E and forms four distinct lupine patches that are separated by an estimated maximum distance of 0.3 mi (0.5 km). The habitat is actively managed for *L. sulphureus* ssp. *kincaidii,* and the long-term goal for TNC's lands is to eventually restore all available upland habitat and expand the population size. These units have the habitat containing the features essential to the conservation of this metapopulation; they provide the highest quality remaining habitat; support one of the largest remaining populations of *L. sulphureus* ssp. *kincaidii;* and provide habitat necessary for population growth.

Unit KL–12C supports a relatively small population of *Lupinus sulphureus* ssp. *kincaidii* occurring on private land, just north of West 11th Avenue. Unit KL–12B also supports a relatively small population of *L. sulphureus* ssp. *kincaidii* occurring on lands owned and managed by the BLM that are located east of Green Hill Road and north of West 11th Avenue. During the proposed critical habitat mapping for KL–12B, an area adjacent to KL–12B was overlooked. The BLM has identified this area adjacent to KL–12B as suitable for expanding the existing population. This adjacent area provides opportunity for contributing to the conservation of *L. sulphureus* ssp. *kincaidii* by expanding the relatively small population and increasing the stability of the overall metapopulation in this area. Unit KL–12A supports another relatively small population of *L. sulphureus* ssp. *kincaidii* occurring on land primarily owned and managed by the BLM and is located east of Green Hill Road and north of West 11th Avenue. Units KL–12A, 12B, and 12C, collectively provide a series of stepping-stone habitat patches between the *L. sulphureus* ssp. *kincaidii* populations owned and managed by TNC and those populations occupying Unit KL–11.

Unit 13 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–13)

Unit KL–13 encompasses approximately 16.2 ac (6.6 ha) of private land in Lane County, and is located north of Powell Road and west of Coyote Creek. The prairie habitat included in this unit supports the southernmost population of *Lupinus sulphureus* ssp. *kincaidii* occurring in the Willamette Valley. The patches of *L. sulphureus* ssp. *kincaidii* are scattered across the available prairie habitat and include some of the densest stands of this plant observed (USFWS 2004a). Although there are no known occurrences of *L. sulphureus* ssp. *kincaidii* within pollinator distance of this population, it may be the healthiest population of this plant remaining. The habitat is threatened by the presence of invasive species such as *Cytisus scoparius* (Scotch broom), and the landowner manually removes the exotic species in order to maintain the conditions required for *L. sulphureus* ssp. *kincaidii* to persist. Unit KL–13 provides the habitat that has the features that are essential to the conservation of the species; it supports possibly the largest remaining *L. sulphureus* ssp. *kincaidii* population; it is surrounded by high quality prairie that provides opportunity for population growth and expansion; and it is the southernmost population remaining in the Willamette Valley.

Erigeron decumbens var. decumbens

In total, we are designating 9 critical habitat units, each of which represents the habitat containing the features essential to the conservation of core populations across the range of the species. To simplify unit descriptions, we have grouped units that are within pollinator distance of one another, and may function as larger, connected metapopulations with proper management and restoration.

There are very few extant populations of *Erigeron decumbens* var. *decumbens* documented outside of Eugene, Oregon. Due to limited distribution, Units WD–1 to WD–5 are important for the continued persistence of *E. decumbens* var. *decumbens* across its current range.

Unit 1 for Erigeron decumbens var. decumbens (Units WD–1A and 1B)

Units WD–1A and 1B encompass approximately 41.2 ac (16.7 ha) of Federal land occurring in northern Polk County. This unit is located adjacent to Highway 22, approximately 5.6 mi (9 km) northeast of the City of Dallas. There are two distinct populations (1A and 1B) located on the Baskett Slough National Wildlife Refuge, approximately 0.9 mi (1.5 km) apart. Unit 1B is located on Baskett Butte summit and coexists with one of the largest remaining Fender's blue butterfly populations. The prairie habitat supporting these *Erigeron decumbens* var. *decumbens* populations is currently being managed for the species. Units WD–1A and 1B contain habitat that has the features essential to the conservation of the species because they support the only remaining viable population of *E. decumbens* var. *decumbens* within Polk County, which represents the northernmost extent of the species' range. Although there are other reported occurrences in the general vicinity, these sites do not meet the minimum patch size for our selection criteria, are highly degraded, or are believed to be extirpated sites and, therefore, are not critical habitat.

Unit 2 for Erigeron decumbens var. decumbens (Unit WD–2)

Unit WD–2 encompasses approximately 12.2 ac (4.9 ha) of private land occurring in southern Marion County. This unit occurs south of SE Triumph Road and east of SE Boedigheimer Road, and supports the largest remaining *Erigeron decumbens* var. *decumbens* population in Marion County. Although this unit is privately owned, the Bonneville Power Administration holds an easement to maintain the powerline right-of-way that bisects the unit. This *E. decumbens* var. *decumbens* population is supported in a relatively large patch of high quality prairie that includes a diverse mix of prairie indicator species. Threats to the site include the presence of invasive species, population isolation including risk of inbreeding depression, and maintenance activities in the powerline right-of-way. Unit WD–2 contains habitat that has the features essential to the conservation of the species; it supports the only core population in Marion County; and it supports a large population in high quality habitat with the opportunity to increase population size and maintain a viable population. Although there are other reported occurrences in the general vicinity, those sites do not meet the minimum patch size as identified by our selection criteria, are highly degraded, or are believed to be extirpated sites and, therefore, are not critical habitat.

Unit 3 for Erigeron decumbens var. decumbens (Units WD–3A, 3B, and 3C)

Unit WD–3 encompasses approximately 58.3 ac (23.6 ha) of private land occurring within northern Linn County. This site is located north of SE Kingston Lyons Drive and on both the east and west sides of Huntly Road, and is primarily owned by TNC. This population of *Erigeron decumbens* var. *decumbens* occurs in a relatively large patch of high quality prairie that supports a diverse mix of prairie indicator species. The *E. decumbens* var. *decumbens* populations are distributed across the prairie remnant in three distinct habitat patches (WD–3A, 3B, and 3C). Threats to this site include the presence of invasive species, and population isolation including risk of inbreeding depression. TNC is managing the habitat supporting this population to allow for population expansion and reduce the distance between *E. decumbens* var. *decumbens* plant patches. Unit WD–3 contains the habitat that has the features essential to the conservation of the species; it supports the only remaining viable population within all of Linn County; supports a large population in high quality habitat with the opportunity to increase population size and establish a viable population; and represents the easternmost extent of the species' range. Although there are other reported occurrences in the general vicinity, those sites do not meet the minimum patch size for our selection criteria, are highly degraded, are roadside without potential for population expansion, or are believed to be extirpated sites and, therefore, are not critical habitat.

Unit 4 for Erigeron decumbens var. decumbens (Units WD–4A and 4B)

Unit WD–4 encompasses approximately 9.3 ac (3.8 ha) of private and City of Corvallis land occurring in Benton County. This unit is located north of SW Reservoir Avenue and south of NW Oak Creek Drive. Approximately half of the habitat within this unit is located on City of Corvallis land and half on private land. The habitat supporting this population of *Erigeron decumbens* var. *decumbens* occurs in two distinct habitat patches (WD–4A and 4B) approximately 0.6 mi (1 km) apart. A portion of the *E. decumbens* var. *decumbens* population occupying this unit occurs along a hiking trail located on private land with a City of Corvallis access easement. Threats to this unit include woody encroachment, trail maintenance, and the small size and isolated nature of the population. There are only two other reported occurrences in Benton County: one population in Unit WD–5 and a second population encompassing 300 square ft. (28 square m) within the boundary of the William Finley National Wildlife Refuge.

Although the *Erigeron decumbens* var. *decumbens* population occupying

this unit is relatively small, it is one of the largest remaining populations in this portion of the species' range and is supported by a large habitat patch with a moderate diversity of indicator species. Unit WD–4 contains habitat that has the features essential to the conservation of the species; it supports one of three remaining populations in Benton County; and has a moderate size population with enough available habitat to provide for population growth and expansion. Unit WD–4 supports a core population fundamental to the continued persistence of the species in this portion of its current range.

Unit 5 for Erigeron decumbens var. decumbens (Unit WD–5)

Unit WD–5 consists of approximately 38.5 ac (15.6 ha) of private land, south of Corvallis, in Benton County. This unit is located along Muddy Creek, just to the west of Cutler Lane. The Greenbelt Land Trust is currently working with the landowner to place a conservation easement on the property, and, in cooperation with the Service, they plan to restore and enhance native habitats within the unit. Unit WD–5 contains the habitat that has the features essential to the conservation of the species; it supports the largest population of *Erigeron decumbens* var. *decumbens* in Benton County; includes substantial habitat for population expansion; and supports the core population fundamental to the continued persistence of the species in this portion of its current range.

Units 6, 7, 8, and 9 for Erigeron decumbens var. decumbens (Units WD–6, WD–7, WD–8, and WD–9)

Units WD–6, WD–7, WD–8, and WD–9 occur in West Eugene, Oregon, and collectively represent the largest, most-connected, functional network of suitable prairie habitat for *Erigeron decumbens* var. *decumbens.* Units WD–6, WD–7, WD–8, and WD–9 contain the habitat that has the features essential to the conservation of this species; they each support stable populations and, collectively, these units support the only large metapopulation of *E. decumbens* var. *decumbens.*

Because units WD–6, WD–7, WD–8, and WD–9 support the only large metapopulation of *E. decumbens* var. *decumbens* across its current range, the habitat supporting these populations provide the highest probability for long-term persistence of the species. Any reduction of available habitat will create more edge effect, increase habitat fragmentation, reduce outcrossing pollination potential, and further reduce population viability. Units WD–6, WD–7, WD–8, and WD–9 are threatened to varying degrees by the encroachment of invasive species and active management will be necessary to ensure the long-term persistence of this large metapopulation. Additionally, habitat enhancement may be necessary to expand populations across this metapopulation and further increase connectivity. Although there are other reported occurrences of *Erigeron decumbens* var. *decumbens* in the general vicinity, those sites do not meet the minimum patch size for our selection criteria, or are highly degraded, and are therefore not critical habitat.

Unit 6 for Erigeron decumbens var. decumbens (Units WD–6A, 6B, 6C, and 6D)

Unit WD–6 encompasses approximately 85.4 ac (34.6 ha) of critical habitat, with an estimated 89 percent on Federal land and 11 percent occurring on private land. This unit is located in Eugene, along Ken Neilsen Road and West 11th Avenue. The federally owned land includes both BLM and Army Corp of Engineers lands. WD–6A supports one of the largest remaining populations of *Erigeron decumbens* var. *decumbens*, occurs on Army Corp of Engineers lands, and is located on the northwestern edge of this relatively large metapopulation.

Unit WD–6 contains habitat that has the features essential to the conservation of this species; it supports a stable population and has an important role in support of the only large metapopulation of *E. decumbens* var. *decumbens.*

Unit 7 for Erigeron decumbens var. decumbens (Units WD–7A and WD–7B)

Unit WD–7A consists of approximately 22.3 ac (9 ha) of critical habitat, primarily on Federal land, with 2 percent occurring on private land. WD–7A is located to the west of Green Hill Road and to the north of West 11th Avenue, and is managed by the Army Corp of Engineers. The habitat included within this unit boundary supports a moderately sized *Erigeron decumbens* var. *decumbens* population with habitat available for population expansion.

Subunit WD–7B encompasses approximately 143.4 ac (58 ha) of primarily Federal land with an estimated 22 percent occurring on private land and an estimated 4 percent occurring on State land. This subunit is located near the intersection of Green Hill Road and West 11th Avenue. *Erigeron decumbens* var. *decumbens* is patchily distributed across the subunit with enough supporting habitat to allow for population growth. The *E. decumbens* var. *decumbens* populations supported by WD–7A and 7B are less than 0.6 miles (1 km) from the nearest neighboring population, providing for pollinator connectivity between habitat patches and increasing the potential for successful reproduction.

Unit WD–7 contains habitat that has the features essential to the conservation of this species; it supports a stable population and has a role in support of the only large metapopulation of *Erigeron decumbens* var. *decumbens.*

Unit 8 for Erigeron decumbens var. decumbens (Units WD–8A, WD–8B, WD–8C, WD–8D, and WD–8E)

Subunits WD–8A and 8B consist of approximately 135.9 ac (55 ha) of Federal and private lands in West Eugene, Oregon. These subunits are located near the intersection of Willow Creek and West 18th Avenue. An estimated 45 percent of this area occurs on private land with approximately 55 percent occurring on BLM land. The western half of subunit WD–8A includes high quality remaining wet prairie; the eastern portion of the site includes much lower quality habitat. WD–8A is a relatively large remnant prairie and provides excellent opportunity for population growth and expansion. WD–8B is located approximately 0.3 mi (0.5 km) directly east of WD–8A. This habitat patch is located directly north of TNC's land, which is currently being managed for *Erigeron decumbens* var. *decumbens*. The location of these subunits, in close proximity to one another, increases the overall quality and viability of this metapopulation.

Subunit WD–8C encompasses approximately 2.5 ac (1 ha) of private land located east of Wallis Street within the City of Eugene. This site supports a relatively small population of *Erigeron decumbens* var. *decumbens* on good quality wet prairie habitat with a diverse species composition. The site is located within 1.5 mi (2.5 km) of WD–9B. Subunit WD–8C provides habitat for population growth and expansion. The *E. decumbens* var. *decumbens* plants occurring in this unit, Unit WD–6, and Unit WD–7 are all in close proximity to one another, thus increasing the potential for cross pollination between populations and reducing the risk of inbreeding depression. The primary threat to this habitat is that it is surrounded by development, reducing pollinator connectivity to the other populations. However, since this habitat is in close proximity to other populations, this *E. decumbens* var. *decumbens* site has a much higher

chance of cross pollination than most remaining isolated populations.

Subunits WD–8D and 8E consist of approximately 74.7 ac (30.3 ha) of prairie habitat that is owned by TNC. These subunits are located just south of West 18th Avenue along Willow Creek. These subunits include high quality prairie and support the second largest *Erigeron decumbens* var. *decumbens* population located in Eugene. These subunits provide sufficient habitat to support population growth and expansion, and are located less than 1.2 mi (2 km) from neighboring *E. decumbens* var. *decumbens* populations. This large, connected, high quality habitat provides one of the core areas contributing towards the long-term conservation of Unit WD–8.

Unit WD–8 contains habitat that has the features essential to the conservation of this species; it supports a stable population and has a role in support of the only large metapopulation of *Erigeron decumbens* var. *decumbens*.

Unit 9 for *Erigeron decumbens* var. *decumbens* (Unit WD–9A, WD–9B, WD–9C, WD–9D, and WD–9E)

Subunit WD–9A encompasses an estimated 90 ac (36.4 ha) of private land and is located approximately 1.2 mi (2 km) east of the intersection of Pine Grove Road and Crow Road. The *Erigeron decumbens* var. *decumbens* population occupying this unit is scattered in a few patches across this large prairie remnant. The habitat included within this unit includes high quality prairie with extensive habitat available to support population growth and expansion. This unit is located approximately 1.2 mi (2 km) north of the closest known *E. decumbens* var. *decumbens* population, increasing the long-term viability of both populations due to increased pollinator accessibility between plant patches.

Subunits WD–9B and 9C consist of approximately 1 ac (0.4 ha) of private land and are located east of Pine Grove Road and south of Crow Road. Although this is a relatively small site, it is located on a high quality prairie remnant that supports a diversity of native composition. The *Erigeron decumbens* var. *decumbens* populations occupying these subunits occur in patches scattered around a stand of oak and Pinus ponderosa (Ponderosa pine). These subunits are located between WD–9A, WD–9D, and WD–9E, and increase the potential for outcrossing pollination of all Unit WD–9 populations.

Subunits WD–9D and WD–9E encompass approximately 3 ac (1.2 ha) of private land and are located north of Spencer Creek Road and east of Pine Grove Road. These subunits include high quality wet prairie with a highly diverse species composition and support hundreds of *Erigeron decumbens* var. *decumbens* plants. This population occurs at the southernmost extent of the species' range, with Unit WD–9C located approximately 1.9 miles (3 km) to the north.

Unit WD–9 contains habitat that has the features essential to the conservation of this species; it supports a stable population and has a role in support of the only large metapopulation of *Erigeron decumbens* var. *decumbens*.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 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. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined 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 primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is 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 proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion 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)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined 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, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* or their designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act 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 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally-funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Fender's blue butterfly, Lupinus sulphureus ssp. kincaidii, and Erigeron decumbens var. decumbens and Their Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens.* The section 7(a)(2) 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 the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* critical habitat units is to support viable core area populations.

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 may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* include, but are not limited to:

(1) Actions that would further degrade, or destroy prairie habitat supporting populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens.* Such activities could include, but are not limited to, the removal or destruction of prairie habitat by grading, leveling, plowing, mowing, burning, operation of motorized equipment, herbicide spraying, or intensive grazing. These activities could eliminate or reduce the habitat necessary for Fender's blue butterfly by removing the host plant essential for reproduction and larval feeding, as well as adult nectaring plants. Additionally, removal or destruction of habitat further isolates populations and increases the risk of inbreeding depression. Implementation of these activities in prairie habitat supporting *L. sulphureus* ssp. *kincaidii* or *E. decumbens* var. *decumbens* could directly eliminate individuals and eliminate the potential for essential population growth and expansion in the available ''open spaces'' of native short-grass prairie habitat.

(2) Actions that further isolate or reduce genetic interchange among populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* from other extant locations within a unit or between subunits. Such activities could include, but are not limited to, the construction or expansion of roads, houses, buildings, or infrastructure that limit dispersal of the Fender's blue butterfly between lupine patches, and limit the dispersal of plant pollinators

between *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* populations. These activities reduce the opportunity for population growth and decrease genetic diversity by limiting normal breeding behaviors.

We consider all of the units designated as critical habitat, as well as those that have been excluded, to contain features essential to the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens.* All critical habitat units are within the geographic ranges of these species, and all were occupied by these species at the time of listing. All units are likely to be used by Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, or *E. decumbens* var. *decumbens* to carry out important life history functions. Federal agencies already consult with us on activities in areas currently occupied by Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, or *E. decumbens* var. *decumbens*, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species.

When analyzing whether the effects of those actions described above constitute adverse modification or destruction of critical habitat, the Service would determine whether the action precludes the ability of any given unit to provide the PCEs for which that unit was designated. In considering whether loss of the function of the PCEs contributes to adverse modification, we will consider the purpose for which any given unit was determined to be essential and designated as critical habitat.

Federal agencies already consult with us on activities in areas currently occupied by the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of these species.

Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential to the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that require no special management or protection also are not, by definition, critical habitat.

There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans as well as management under Federal agencies jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, 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 [s]he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless [s]he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the 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). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (*i.e.*, 90–100 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; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbors, CCAs, CCAAs, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence 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; Bean 2002;

Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many 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 many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (*e.g.*, reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the state is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC, which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (*e.g.*, axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species) and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island we believe that the benefits of excluding the lands covered by the MOA exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

> On Lanai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

The Department's Four Cs philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (*e.g.*, Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. 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 primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved

through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will always 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.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the 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 Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens.* In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas were included in the proposed rule as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas which would benefit from protection and enhancement of habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* is already well established among State and local governments, and Federal agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

This section allows the Secretary to exclude areas from critical habitat for economic reasons if she determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat.

In general, we have considered in making the following exclusions that all of the costs and other impacts predicted in the economic analysis may not be avoided by excluding the area, due to the fact that all of the areas in question are currently occupied by the listed species and there will be requirements for consultation under Section 7 of the Act, or for permits under section 10 (henceforth ''consultation''), for any take of these species, and other protections for the species exist elsewhere in the Act and under State and local laws and regulations. In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis that may overstate some costs.

Conversely, the Ninth Circuit has recently ruled (''Gifford Pinchot'', 378 F.3d at 1071) that the Service's regulations defining ''adverse modification'' of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, compliance with the Court's direction may result in additional costs associated with the designation of critical habitat (depending upon the outcome of the rulemaking). In light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, 9, and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling.

In addition, we have received several credible comments on the economic analysis contending that it underestimates, perhaps significantly, the costs associated with this critical habitat designation. Both of these factors are a balancing consideration against the possibility that some of the costs shown in the economic analysis might be attributable to other factors, or are overly high, and so would not necessarily be avoided by excluding the area for which the costs are predicted from this critical habitat designation.

We excluded lands owned by Mallonee Farms in Lewis County, Washington, private timber company lands in Douglas County, Oregon, and lands managed by the Bureau of Land Management (BLM) and U.S. Forest Service (Forest Service) in Douglas County, Oregon, from the final designation of critical habitat because we believe that they are appropriate for exclusion pursuant to the ''other relevant factor'' provisions of section 4(b)(2).

Mallonee Farms

The proposed critical habitat for *Lupinus sulphureus* ssp. *kincaidii* in Lewis County, Washington, included land owned by Mallonee Farms (Farm) in the proposed critical habitat unit KL–1A. This land is occupied by *L. sulphureus* ssp. *kincaidii* and supports the features essential to the conservation

of the species. The landowners of the Farm have been working cooperatively with Federal and State agencies, including the Service, to implement recovery activities for *L. sulphureus* ssp. *kincaidii* on their property. In conjunction with the USDA Natural Resources Conservation Service, the landowners have developed a site-specific farm management plan for *L. sulphureus* ssp. *kincaidii* on their property, including unit KL–1A. Active management, such as improved grazing and forage practices, invasive plant control, and periodic monitoring in cooperation with Federal and State agencies, will allow for an adaptive management approach within the unit to benefit *L. sulphureus* ssp. *kincaidii.* The landowners also recently allowed cooperating agencies access to their property to document additional lupine patches that were not known to previously occur on the property. The landowners have demonstrated the success of their voluntary management activities on the Farm by providing habitat conditions that support several flourishing *L. sulphureus* ssp. *kincaidii* patches. Without these protective management measures, all of which require voluntary landowner support and participation, the agricultural uses of this property would likely result in extirpation of *L. sulphureus* ssp. *kincaidii* from this area.

If critical habitat designation in unit KL–1A reduces the likelihood that voluntary conservation activities will be carried out, and at the same time fails to confer a counterbalancing positive regulatory or educational benefit to the species, the benefits of excluding the unit from critical habitat outweigh the benefits of including it.

(1) Benefits of Inclusion

Critical habitat was proposed for *Lupinus sulphureus* ssp. *kincaidii* in unit KL–1A on land owned by Mallonee Farms. The primary direct benefit of inclusion of this land as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where the species is not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act. However, this unit is already occupied habitat for *L. sulphureus* ssp. *kincaidii.* Therefore, any Federal activities that may affect these areas will in all likelihood require section 7 consultation.

Historically, we have conducted no formal or informal consultations under section 7 on unit KL–1A. As a result of the low level of previous Federal activity on this land, and considering that the likelihood of future Federal activities occurring on these lands would be minimal and associated with Federal funding for conservation activities, it is our opinion that there is likely to be a low number of future Federal activities that would negatively affect *Lupinus sulphureus* ssp. *kincaidii* habitat. Therefore, we anticipate little additional regulatory benefit from including unit KL–1A in critical habitat beyond what is already provided for by the existing section 7 nexus for areas occupied by the species.

Another possible benefit from the designation of critical habitat is that designation can serve to educate the public regarding the potential conservation value of an area. By clearly delineating areas that are occupied by the species and informing the public that the area contains features essential to the conservation of the species, designation may focus and contribute to conservation efforts such as improved agricultural practices. Information provided to a wide public audience, including other parties engaged in conservation activities, about *Lupinus sulphureus* ssp. *kincaidii* and the features essential to its conservation as identified in unit KL–1A could have a positive conservation benefit. While we believe this educational outcome is important for the conservation of this species, it has already been achieved through existing management, education, and public outreach efforts carried out by the farm landowners and various Federal and State agencies.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of *Lupinus sulphureus* ssp. *kincaidii* within its historic range. Consideration of this concern is especially important in areas where the species has been extirpated and its recovery may require access and permission for reintroduction efforts. For example, *L. sulphureus* ssp. *kincaidii* has been extirpated from many of its historical locations in Oregon and Washington and reestablishment is likely not possible without human assistance and non-Federal landowner cooperation.

As described above, the landowners of the Farm have cooperated with Federal and State agencies to protect *Lupinus sulphureus* ssp. *kincaidii* patches on their property. They are willing to conduct voluntary conservation activities on their property for threatened and endangered species, but may not continue these efforts if there is a significant regulatory or economic burden to do so.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to non-Federal landowners to voluntarily conserve natural resources, and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998, p. 614; Michael 2001, pp. 34 and 36–37). Thus, for the recovery of *Lupinus sulphureus* ssp. Kincaidii, we believe it is important to build on continued conservation activities such as those with a proven partner, and to provide incentives for non-Federal landowners who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove *et al.* 1996 p. 2). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002, p. 414; James 2002, p. 270; Knight 1999, p. 224; Main *et al.* 1999, p. 1,263; Norton 2000, pp. 1,221–1,222; Shogren *et al.* 1999, p. 1,260; Wilcove *et al.* 1998, p. 614). Therefore, ''a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species'' (Crouse *et al.* 2002, p. 720). Since land suitable for conservation of many threatened and endangered species is mostly owned by private landowners, successful recovery of *Lupinus sulphureus* ssp. *kincaidii* in Oregon and Washington is especially dependent on working partnerships and the voluntary cooperation of private landowners.

Another benefit of excluding unit KL–1A from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 consultation documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can

generate real costs to some project proponents. However, because critical habitat in this case only includes proposed for occupied areas already subject to section 7 consultation and jeopardy analysis, it is anticipated this reduction would be minimal.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, we have determined that the benefits of excluding unit KL–1A from the final designation of critical habitat outweigh the benefits of including it as critical habitat for *Lupinus sulphureus* ssp. *kincaidii*. This conclusion is based on the following factors:

(a) In the past, the landowners have cooperated with Federal and State agencies and private organizations to implement voluntary conservation activities on their property that have resulted in tangible conservation benefits for *Lupinus sulphureus* ssp. *kincaidii*. Since purchasing the property in 1967, the landowners have maintained several healthy L. sulphureus ssp. *kincaidii* patches and developed a farm management plan to ensure that L. sulphureus ssp. *kincaidii* will continue to flourish and possibly expand on their property.

(b) Simple regulation of ''harmful activities'' is not sufficient to conserve *Lupinus sulphureus* ssp. *kincaidii*. Non-Federal landowner cooperation and support is required to prevent the extinction and promote the recovery of L. sulphureus ssp. *kincaidii* within its historic range. Future conservation efforts will require the cooperation of other non-Federal landowners. The exclusion of unit KL–1A will help the Service to maintain and improve the voluntary conservation partnership by formally recognizing the positive contributions of the landowners and by reducing unnecessary regulatory oversight.

(c) Given the current management status of the Farm, we believe there will be little additional regulatory benefit to *Lupinus sulphureus* ssp. *kincaidii* by including unit KL–1A as critical habitat because (i) there is a low likelihood that the unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (ii) the unit is already occupied by the species and a section 7 nexus already exists.

In conclusion, we find that the exclusion of unit KL–1A from the final designation of critical habitat for *Lupinus sulphureus* ssp. *kincaidii* would most likely have a net positive conservation effect on the recovery and conservation of the species and the features essential to its conservation when compared to the positive conservation effects of a critical habitat designation. As described above, the overall benefit of designating the unit as critical habitat for *L. sulphureus* ssp. *kincaidii* is relatively small. In contrast, we believe that this exclusion will enhance our existing non-Federal lands partnerships, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their properties. Therefore, the area included within KL–1A in the proposed critical habitat designation will be excluded from the final designation.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether exclusion of unit KL–1A might result in the extinction of *Lupinus sulphureus* ssp. *kincaidii*, we first considered the impacts to the species. Our conclusion is that the conservation efforts on the Farm will provide as much or more net conservation benefits as would be provided if the unit was designated as critical habitat. These conservation efforts, as described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for *L. sulphureus* ssp. *kincaidii* in the unit, and increase the likelihood of its recovery in the local area. Extinction of *L. sulphureus* ssp. *kincaidii* as a consequence of this exclusion is unlikely; no known threats exist in thr area because any current or reasonably anticipated Federal actions would likely be regulated under section 7 of the Act. Further, the unit is already occupied by *L. sulphureus* ssp. *kincaidii* and would benefit from the section 7 protections of the Act if a Federal threat actually materialized. The exclusion of unit KL–1A from the final designation of critical habitat will not increase the risk of extinction to the species, and it may increase the likelihood that the species will recover further by encouraging other non-Federal landowners to implement voluntary conservation activities, as the landowners of the Farm have done.

Private Timber Company Lands in Douglas County

The proposed critical habitat for *Lupinus sulphureus* ssp. *kincaidii* in Douglas County, Oregon, included land owned by Roseburg Forest Products, Seneca Jones Timber Company, and Lone Rock Timber Management Company (companies) in units KL–14B, KL–15A, and KL–15B. The lands are occupied by *L. sulphureus* ssp. *kincaidii* and support the features essential to the conservation of the species. In conjunction with the Service, these companies have developed a formal voluntary agreement for the conservation of *L. sulphureus* ssp. *kincaidii* on their respective properties, including units KL–14B, KL–15A, and KL–15B. The companies agree to collaborate with us to protect and conserve *L. sulphureus* ssp. *kincaidii* populations on their private lands. Active management identified in the voluntary agreement will allow for an adaptive management approach within the units to benefit *L. sulphureus* ssp. *kincaidii*. The agreement accomplishes this through such activities as—training staff to identify *L. sulphureus* ssp. *kincaidii* and locate known population occurrence; conducting, or aiding in, monitoring within the known *L. sulphureus* ssp. *kincaidii* populations on the private lands; notifying us of new *L. sulphureus* ssp. *kincaidii* occurrences that are found; controlling noxious weeds and competing vegetation through mechanical and chemical control; and coordinating *L. sulphureus* ssp. *kincaidii* propagation activities with us for seed procurement and selection of appropriate introduction sites for establishing new populations and expanding known populations. Currently, habitat conditions that support several vigorous *L. sulphureus* ssp. *kincaidii* patches occur on these companies' lands.

If critical habitat designation in units KL–14B, KL–15A, and KL–15B reduces the likelihood that these voluntary conservation activities will be carried out, and at the same time fails to confer a counterbalancing positive regulatory or educational benefit to the species, then the benefits of excluding the units from critical habitat outweigh the benefits of including it.

(1) Benefits of Inclusion

Critical habitat was proposed for *Lupinus sulphureus* ssp. *kincaidii* in unit KL–14B on land owned by Lone Rock Timber Management Company and Seneca Jones Timber Company, and units KL–15A and KL–15B owned by Roseburg Forest Products. The primary direct benefit of inclusion of this land as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal action does not destroy or adversely modify critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where the species is not currently present; in contrast, Federal actions in areas occupied by listed

species would still require consultation under section 7 of the Act. However, these units are already occupied habitat for *L. sulphureus* ssp. *kincaidii*. Therefore, any Federal activities, such as discretionary right-of-way permits, that may affect these areas will in all likelihood require section 7 consultation. The land is in permanent timber management status and is not expected to be developed. Therefore, we anticipate little additional regulatory benefits from including these private lands in critical habitat beyond what is already provided by the existing section 7 nexus for habitat areas occupied by the listed species.

Another possible benefit from the designation of critical habitat is that designation can serve to educate the public regarding the potential conservation value of an area. Information provided to a wide audience of the public, including other parties engaged in conservation activities, about *L. sulphureus* ssp. *kincaidii* and the features that are essential to its conservation identified on private timber lands in Douglas County could have a positive conservation benefit. The companies are currently in communication with us, and it is unclear that additional educational value would be provided as a result of critical habitat designation beyond the current level of awareness that exists concerning the presence of populations of *L. sulphureus* ssp. *kincaidii* that occur on the properties.

In sum, we believe that a critical habitat designation for *Lupinus sulphureus* ssp. *kincaidii* on these private timber lands in Douglas County would provide a relatively low level of additional conservation benefit to the plant beyond what is already provided by existing section 7 consultation requirements due to the physical presence of this species. Based on a review of past consultations and consideration of the likely future activities in this specific area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. We also believes it is unlikely that critical habitat designation would provide additional educational benefits since the private timber companies are already aware of these populations and are participating with us in a voluntary agreement to conserve *L. sulphureus* ssp. *kincaidii* on their lands.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of *Lupinus sulphureus* ssp. *kincaidii* within its historic range in Douglas County. Consideration of this concern is especially important in areas where the species has been extirpated and its recovery may require access and permission for reintroduction efforts. For example, *L. sulphureus* ssp. *kincaidii* has been extirpated from many of its historical locations in Oregon and Washington, and reestablishment is likely not possible without human assistance and non-Federal landowner cooperation.

As described above, the companies are cooperating with Federal agencies to protect *Lupinus sulphureus* ssp. *kincaidii* patches on their properties. They are willing to conduct voluntary conservation activities on their property for endangered species, but may not continue these efforts if there is a significant regulatory or economic burden to do so.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to non-Federal landowners to voluntarily conserve natural resources, and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998, p. 614; Michael 2001, pp. 34 and 36–37). Therefore, for the recovery of *Lupinus sulphureus* ssp. *Kincaidii,* we believe it is important to build on continued conservation activities such as those with a committed partner, and to provide incentives for non-Federal landowners who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove *et al.* 1996 p. 2). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002, p. 414; James 2002, p. 270; Knight 1999, p. 224; Main *et al.* 1999, p. 1,263; Norton 2000, pp. 1,221–1,222; Shogren *et al.* 1999, p. 1,260; Wilcove *et al.* 1998, p. 614). Therefore, ''a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species'' (Crouse *et al.* 2002, p. 720). Since land suitable for conservation of many threatened and endangered species is mostly owned by private landowners, successful recovery of *Lupinus sulphureus* ssp. *kincaidii* in Oregon and Washington is especially dependent upon working partnerships and the voluntary cooperation of private landowners.

We believe that *Lupinus sulphureus* ssp. *kincaidii* will benefit substantially from the companies' voluntary management actions to protect existing populations, reduce nonnative weed competition, and expand existing populations through propagation efforts. The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature; simply preventing ''harmful activities'' will not slow the extinction of listed plant species (Bean 1998).

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, we have determined that the benefits of excluding the lands owned by Roseburg Forest Products, Seneca Jones Timber Company, and Lone Rock Timber Management Company from the final designation of critical habitat outweigh the benefits of including it as critical habitat for *Lupinus sulphureus* ssp. *kincaidii.* This conclusion is based on the following factors:

(a) The companies are cooperating with Federal agencies to implement voluntary conservation activities on their properties that are expected to result in tangible conservation benefits for *Lupinus sulphureus* ssp. *kincaidii.* A formal voluntary agreement has been signed by the companies and the Service. This agreement includes conservation actions that will maintain several vigorous *L. sulphureus* ssp. *kincaidii* patches and ensure that *L. sulphureus* ssp. *kincaidii* will continue to flourish and possibly expand on their properties.

(b) Regulation of ''harmful activities'' is not sufficient to conserve this species. Landowner cooperation and support is required to prevent the extinction and promote the recovery of *Lupinus sulphureus* ssp. *kincaidii* due to the need to implement proactive conservation actions such as avoidance, weed control, and fire suppression. The voluntary agreement will promote conservation actions such as control of nonnative species and in doing so will require the cooperation of the three private timber companies. Exclusion of land from this critical habitat designation will help us maintain and improve this partnership by formally recognizing the positive contributions of the companies to recovery of *L. sulphureus* ssp. *kincaidii,* and by

streamlining or reducing unnecessary regulatory oversight.

Excluding this private land from critical habitat may, by way of example, provides positive incentives to other non-Federal landowners in Oregon whose lands could contribute to listed species recovery if voluntary conservation measures are implemented on them.

(c) The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through ongoing communication between the companies, Roseburg BLM, and the Service. Likewise, there will be little additional Federal regulatory benefit to the species because (i) there is a low likelihood that this area will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (ii) this area is already occupied by the listed species and a section 7 nexus already exists. We are unable to identify any other potential benefits associated with critical habitat for the private lands.

In conclusion, we find that the exclusion of units KL–14B, KL–15A, and KL–15B from the final designation of critical habitat for *Lupinus sulphureus* ssp. *kincaidii* would most likely have a net positive conservation effect on the recovery and conservation of the species and the features essential to its conservation when compared to the positive conservation effects of a critical habitat designation. As described above, the overall benefits to this species of a critical habitat designation for the companies' lands is relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with the companies, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. There is a higher likelihood of beneficial conservation activities occurring without designated critical habitat than there would be with designated critical habitat on these private lands. Therefore, we are excluding units KL–14B, KL–15A, and KL–15B from the final designation of critical habitat for *L. sulphureus* ssp. *kincaidii.*

(4) Exclusion of These Units Will Not Cause Extinction of the Species

In considering whether exclusion of units KL–14B, KL–15A, and KL–15B might result in the extinction of *Lupinus sulphureus* ssp. *kincaidii,* we first considered the impacts to the species. Our conclusion is that the voluntary conservation efforts of these companies will provide as much or more net conservation benefits as would be provided if the units were designated as critical habitat. These conservation efforts, as described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for *L. sulphureus* ssp. *kincaidii* in the units and increase the likelihood of its recovery in the local area. Extinction of *L. sulphureus* ssp. *kincaidii* as a consequence of this exclusion is unlikely because there are no known threats in this area due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, the units are already occupied by *L. sulphureus* ssp. *kincaidii* and would benefit from the section 7 protections of the Act, if a Federal threat actually materialized. The exclusion of units KL–14B, KL–15A, and KL–15B from the final designation of critical habitat will not increase the risk of extinction to the species, and it may increase the likelihood that the species will recover further by encouraging other non-Federal landowners to implement voluntary conservation activities, as the landowners of the companies have done.

Roseburg District Bureau of Land Management and U.S. Forest Service Lands

On April 19, 2006, we signed a conservation agreement with the Roseburg BLM and Forest Service for lands they manage in Douglas County, Oregon. The purpose of the agreement is to formally document the intent of the parties to implement recovery actions for *Lupinus sulphureus* ssp. *kincaidii.* Specifically, the agreement identifies objectives to protect, conserve, and restore habitat for each of the *L. sulphureus* ssp. *kincaidii* populations occurring on these Federal lands. The goal of this agreement is to implement the recovery actions necessary to meet the specific recovery criteria for *L. sulphureus* ssp. *kincaidii* in the Douglas County Recovery Zone, as specified in the Recovery Outline published by Service (USFWS 2006, pp. 12–18).

The conservation agreement contains management direction that would serve to protect, conserve and contribute to the recovery by implementing recovery actions for *Lupinus sulphureus* ssp. *kincaidii.* The objectives and goals in the conservation agreement were developed specifically for *L. sulphureus* ssp. *kincaidii.* Two key standards provide strong assurances that *L. sulphureus* ssp. *kincaidii* will be protected and managed on the BLM and Forest Service lands. The standards are (1) all *L. sulphureus* ssp. *kincaidii* sites will be protected on BLM and Forest Service lands in Douglas County, and (2) recovery plan criteria as listed in the Recovery Outline (USFWS 2006, pp. 12–18) for *L. sulphureus* ssp. *kincaidii* will be implemented (BLM *et al.* 2006, p. 2). A site-specific draft management plan will be developed by December 31, 2006, and will trigger consultation with us under section 7 of the Act.

In addition to the conservation plan that BLM and Forest Service voluntarily signed, several other voluntary activities demonstrate BLM's and Forest Service's commitment to conservation of *Lupinus sulphureus* ssp. *kincaidii* and other listed species. Over the last 5 years, these agencies have completed annual *L. sulphureus* ssp. *kincaidii* surveys that have led to the identification of new populations. Roseburg BLM has developed a conservation technique that has improved habitat. Specifically, they identified the use of cattle exclusion fencing benefits *L. sulphureus* ssp. *kincaidii.* The Forest Service conducted a 3-year study on the effects of herbivory, using leaf clipping as a surrogate, to *L. sulphureus* ssp. *kincaidii,* and has enhanced protection of the population by excluding cattle from the areas occupied by the plant. The Forest Service and BLM also actively manage and protect lands in an effort to help in the recovery of other federally listed species such as *Plagiobothrys hirtus* (rough popcornflower), northern spotted owl (*Strix occidentalis caurina*), American bald eagle (*Haliaeetus leucocephalus*) and marbled murrelet (*Brachyramphus marmoratus*).

We believe that the standards and guidelines outlined in the conservation agreement and the agencies commitment to protect and recover federally listed species through section 7(a)(1) and 7(a)(2), adequately address identified threats to *Lupinus sulphureus* ssp. *kincaidii* and its habitat. Therefore, the relative benefits of inclusion of these lands within designated critical habitat are diminished.

(1) Benefits of Inclusion

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us pursuant to 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 to consult

with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The Forest Service and BLM routinely consult with us for activities on lands they manage that may affect federally listed species to ensure that the continued existence of such species is not jeopardized.

Designation of critical habitat may also provide educational benefits by informing land managers of areas essential to the conservation of the *Lupinus sulphureus* ssp. *kincaidii.* In the case of Roseburg BLM and the Umpqua National Forest, there is no appreciable educational benefit because these land managers have already demonstrated their knowledge and understanding of habitat for the species through their active recovery efforts and consultation. The benefits of including these Federal lands in designated critical habitat are minimal, because the land managers are currently implementing conservation actions for *L. sulphureus* ssp. *kincaidii* and are committed to meeting recovey criteria for *L. sulphureus* ssp. *kincaidii* in Douglas County. This is equal to or exceeds benefits that would be realized if critical habitat were designated.

(2) Benefits of Exclusion

Designation of critical habitat on the Umpqua National Forest and Roseburg BLM lands would trigger a requirement for the Forest Service and BLM to consult on activities that may affect designated critical habitat. Designation of critical habitat would also require reinitiating consultation on ongoing activities where a consultation may have already been completed that assessed the effects to a federally listed species. If critical habitat is designated there will be new administrative costs associated with the additional consultations or the need to revisit completed consultations. The benefit of using those resources for specific conservation activities exceeds the benefit of completing additional consultations. If the area is designated as critical habitat, it might adversely impact the agencies' ability to devote limited resources to the voluntary conservation measures noted above, which exceed those that could be realized from a critical habitat designation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for *Lupinus sulphureus* ssp. *kincaidii* on Federal lands in Douglas County are small in comparison to the benefits of excluding these specific areas from the final designation. Exclusion would enhance the partnership efforts with the BLM and Forest Service focused on conservation of the species on the lands they manage, and potentially reduce some of the administrative costs during consultation pursuant to section 7 of the Act. Therefore, we find the benefits of exclusion outweigh the benefits of inclusion.

(4) The Exclusion Will Not Result in Extinction of the Species

We believe that the exclusion of Douglas County Federal lands from critical habitat would not result in the extinction of *Lupinus sulphureus* ssp. *kincaidii,* because current conservation efforts and conservation agreement commitments for Douglas County Federal lands adequately protect important *L. sulphureus* ssp. *kincaidii* habitat and go beyond this to provide appropriate management to maintain and enhance the primary constituent elements in order to specifically meet recovery criteria for *L. sulphureus* ssp. *kincaidii.* Designation of critical habitat would not require the current conservation efforts, but only that habitat not be destroyed or adversely modified. There is no reason to believe that this exclusion would result in extinction of the species.

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 June 15, 2006 (71 FR 34566). We accepted comments on the draft analysis until June 30, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* or *Erigeron decumbens* var. *decumbens.* 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 co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. 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 economic analysis addresses the effects of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* or *Erigeron decumbens* var. *decumbens* conservation efforts on activities occurring on lands proposed for designation. The potential activities anticipated to have economic effects may include development, management of public and conservancy lands, transportation operations, and the Benton County Habitat Conservation Plan (HCP). Development-related losses account for 35 percent of forecasted costs; another 30 percent of the forecasted costs are associated with managing public and conservancy lands costs; another 30 percent of forecasted costs are associated with transportation operations, and 5 percent are associated with the Benton County Habitat Conservation Planning (HCP) costs.

In the economic impact analysis, development impacts are presented based on the assumption that due to the small, tightly defined boundaries of the critical habitat designation, where development falls within critical habitat boundaries and there is a Federal nexus, it would be difficult for development to proceed without adversely modifying critical habitat. Post-designation costs are expected to range from $25.3 to $52.7 million in undiscounted 2006 dollars. In present value terms, this range is equivalent to $19.1 to $40.3 million (assuming a 3 percent discount

rate) and $15.3 to $32.6 million (assuming a 7 percent discount rate). The total economic impacts are not uniformly distributed across the habitat subunits. In fact, there is a large variation in economic impacts between subunits that contain privately owned developable land. Land use restrictions are expected to have the greatest economic impact in subunit Fender's blue butterfly (FBB)–8 (Wren), which includes overlap with *Lupinus sulphureus* ssp. *kincaidi* (KL)–9 (also named Wren). This unit includes the largest area of privately owned land (713 acres). Subunit FBB–4B (Baskett Butte) contains the next largest area of private land within the critical habitat designation (327 acres). Together, these subunits contain almost 50 percent of the private land within the critical habitat designation, and account for approximately 45 percent of the development-related economic impacts, which represents 10 percent of the total costs/impacts.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* or *Erigeron decumbens* var. *decumbens* are not owned or managed by the Department of Defense; there are currently no habitat conservation plans for Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii,* or *E. decumbens* var. *decumbens;* and the designation does not include any Tribal lands or trust resources. We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation. Based on the best available information, including the prepared economic analysis, we believe that all of these units contain the features essential for the conservation of this species. Our economic analysis indicates an overall low cost resulting from the designation. Therefore, we have found no areas for which the benefits of exclusion outweigh the benefits of inclusion for Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii,* or *E. decumbens* var. *decumbens* based on economic impacts.

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (*see* **ADDRESSES** section) or by down from the Internet at *http://www.fws.gov/oregonfwo/Species/ESA-Actions/WillValleyPage.asp.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. On the basis of the final economic analysis, we have determined that the post designation costs may range from $25.3 to $52.7 million in undiscounted 2006 dollars. In present value terms, this range is equivalent to $19.1 to $40.3 million (assuming a 3 percent discount rate) and $15.3 to $32.6 million (assuming a 7 percent discount rate). As such, this designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat, and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combined thereof, in a designation constitutes our regulatory alternative analysis.

As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (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 (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry 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 number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*. Federal agencies also must consult with us if their activities may affect 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.

In our draft economic analysis of this designation, we evaluated the potential economic effects on small business entities resulting from the protection of the prairie species and their habitat related to the species and proposed designation of critical habitat. The potential activities anticipated to have economic effects may include development, management of public and conservancy lands, transportation operations, and the Benton County Habitat Conservation Plan (HCP). Development-related losses account for 35 percent of forecasted costs; another 30 percent of the forecasted costs are associated with managing public and conservancy lands costs; another 30 percent of forecasted costs are associated with transportation operations, and 5 percent are associated with the Benton County Habitat Conservation Planning (HCP) costs.

Small entities identified in the economic analysis included forestry, agriculture, and five cities. The potential impacts to the identified small entities are small. One family-owned forestry business was identified within the critical habitat designation and represents only one of 494 businesses within the eight-county critical habitat boundary that may be affected. It is estimated in the draft economic analysis that conservation activities may cost the company about $1,000 to $3,000 annually. The draft economic analysis also analyzed all agricultural operations and concluded that the impacts by conservation efforts are considered small (the potential farms to be impacted represent about 1.2 percent of the total small farms in the eight-county critical habitat boundary). Of the five small governments identified in the draft economic analysis, only Dallas was identified as an entity potentially impacted by conservation activities. The costs were estimated to be approximately 0.08 to 0.5 percent of the City's annual expenditures.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* and their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through nondiscretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Actions that would further degrade or destroy prairie habitat supporting populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*. Such activities could include, but are not limited to, the removal or destruction of prairie habitat by grading, leveling, plowing, mowing, burning, operation of motorized equipment, herbicide spraying, or intensive grazing. These activities could eliminate or reduce the habitat necessary for Fender's blue butterfly by removing the host plant essential for reproduction and larval feeding, as well as adult nectaring plants. Additionally, removal or destruction of habitat further isolates populations and increases the risk of inbreeding depression. Implementation of these activities in prairie habitat supporting *L. sulphureus* ssp. *kincaidii* or *E. decumbens* var. *decumbens* could directly eliminate individuals and the potential for essential population growth and expansion in the available ''open spaces'' of native short-grass prairie habitat.

(2) Actions that further isolate or reduce genetic interchange among populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*

from extant locations within a unit or between subunits. Such activities could include, but are not limited to, the construction or expansion of roads, houses, buildings, or infrastructure that limit dispersal of the Fender's blue butterfly between lupine patches, and limit the dispersal of plant pollinators between *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* populations. These activities reduce the opportunity for population growth and decrease genetic diversity by limiting normal breeding behaviors.

The most likely Federal nexus by which these activities would be consulted upon include: Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act; road construction and maintenance, and right-of-way designation funded by the Federal Highway Administration; Federal regulation of agricultural activities; hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and activities funded by the Environmental Protection Agency, U.S. Department of Agriculture, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this critical habitat designation would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Corps permits, permits we may issue under section 10(a)(1)(B) of the Act, Federal Highways Administration funding for road improvements, and Federal funding for conservation activities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we have determined that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(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, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who 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, 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) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the 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 Oregon and Washington. The designation of critical habitat in areas currently occupied by the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* 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 primary constituent elements 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

In accordance with Executive Order 12988, 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 primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*.

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. 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

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 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 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. We have determined that there are no Tribal lands occupied at the time of listing, and no tribal lands that are unoccupied that contain the features essential for the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*. Therefore, critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* has not been designated on Tribal lands.

References Cited

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

Author(s)

The primary author of this package is Mikki Collins, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.11(h), revise the entry for ''Fender's blue butterfly'' under ''INSECTS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Butterfly, Fender's blue.	*Icaricia icarioides fenderi.*	U.S.A. (OR)	NA	E	679	17.95(i)	NA
*	*	*	*	*	*		*

■ 3. In § 17.12(h), revise the entry for *Erigeron decumbens* var. *decumbens* (Willamette daisy) and *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine) under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Erigeron decumbens var. *decumbens.*	Willamette daisy	U.S.A. (OR)	Asteraceae—Aster family.	E	679	17.96	NA
*	*	*	*	*	*		*
Lupinus sulphureus ssp. *kincaidii.*	Kincaid's lupine	U.S.A (OR, WA)	Fabaceae—Pea family.	T	679	17.96	NA
*	*	*	*	*	*		*

■ 4. In § 17.95(i), add an entry for ''Fender's blue butterfly'' in alphabetical order under ''INSECTS'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Fender's blue butterfly (*Icaricia icarioides fenderi*)

(1) Critical habitat units are depicted for Benton, Lane, Polk, and Yamhill Counties, Oregon, on the maps below.

(2) The primary constituent elements of critical habitat for Fender's blue butterfly are the habitat components that provide:

(i) Early seral upland prairie, wet prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, an absence of dense canopy vegetation, and undisturbed subsoils;

(ii) Larval host-plants *Lupinus sulphureus* ssp. *kincaidii, L. arbustus,* or *L. albicaulis;*

(iii) Adult nectar sources, such as:*Allium acuminatum* (tapertip onion), *Allium amplectens* (narrowleaf onion), *Calochortus tolmiei* (Tolmie's mariposa lilly), *Camassia quamash* (small camas), *Cryptantha intermedia* (clearwater cryptantha), *Eriophyllum lanatum* (wooly sunflower), *Geranium oreganum* (Oregon geranium), *Iris tenax* (toughleaf iris), *Linum angustifolium* (pale flax), *Linum perenne* (blue flax), *Sidalcea campestris* (Meadow checkermallow), *Sidalcea virgata* (rose checker-mallow), *Vicia cracca* (bird vetch), *V. sativa* (common vetch), and *V. hirsute* (tiny vetch);

(iv) Stepping-stone habitat consisting of undeveloped open areas with the physical characteristics appropriate for supporting the short-stature prairie oak savanna plant community (well-drained soils), within ~1.2 miles (~2 km) of natal lupine patches.

(3) Critical habitat does not include man-made structures (such as buildings, aqueducts, airports, roads, and other paved areas, and the land on which such structures are located) existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical Habitat Map Units.* Data layers defining map units were created using USGS 24,000 scale Digital Ortho Quads captured in 2000. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 1983 coordinates.

(5) Note: Map 1 (Index map for Fender's blue butterfly) follows:

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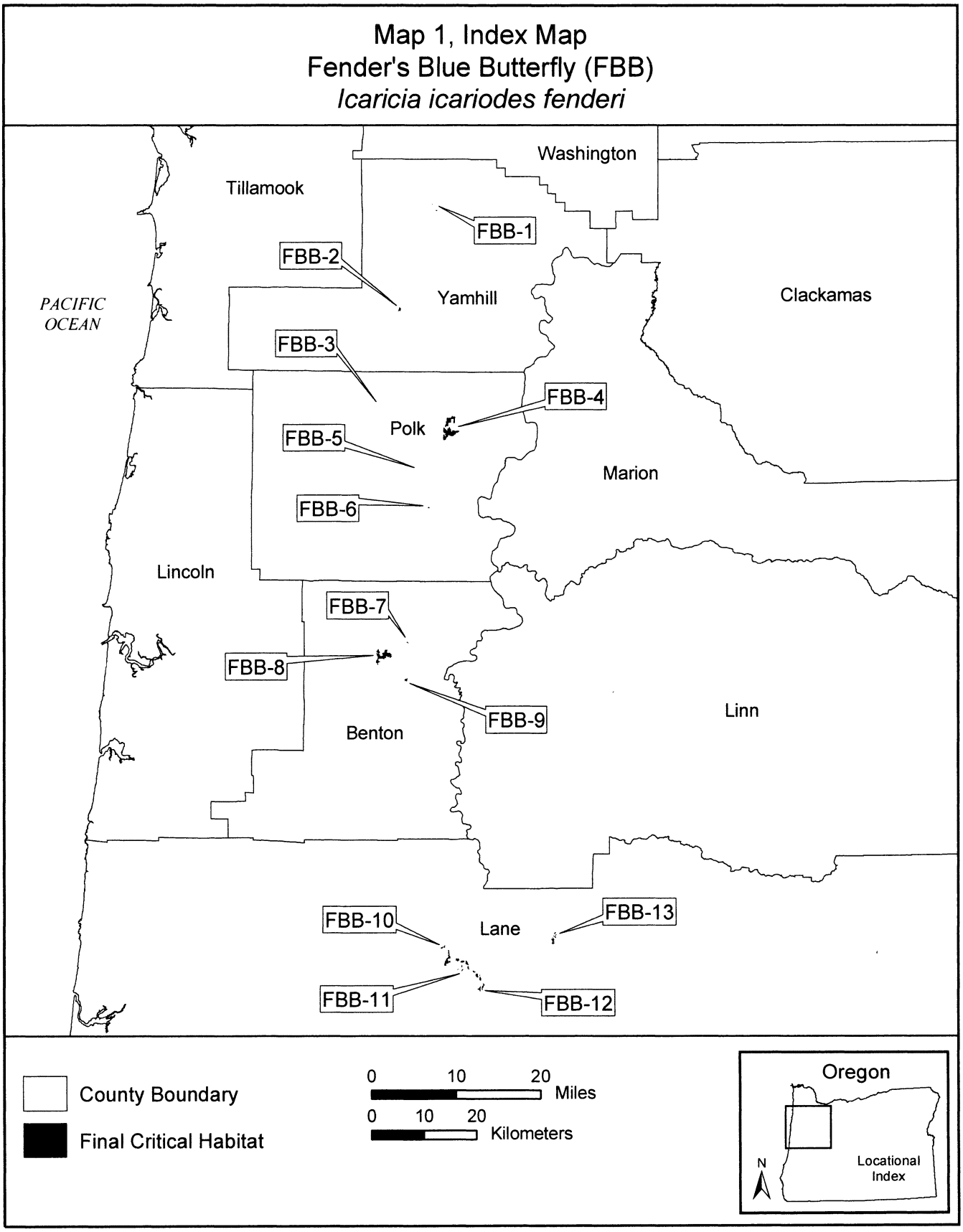
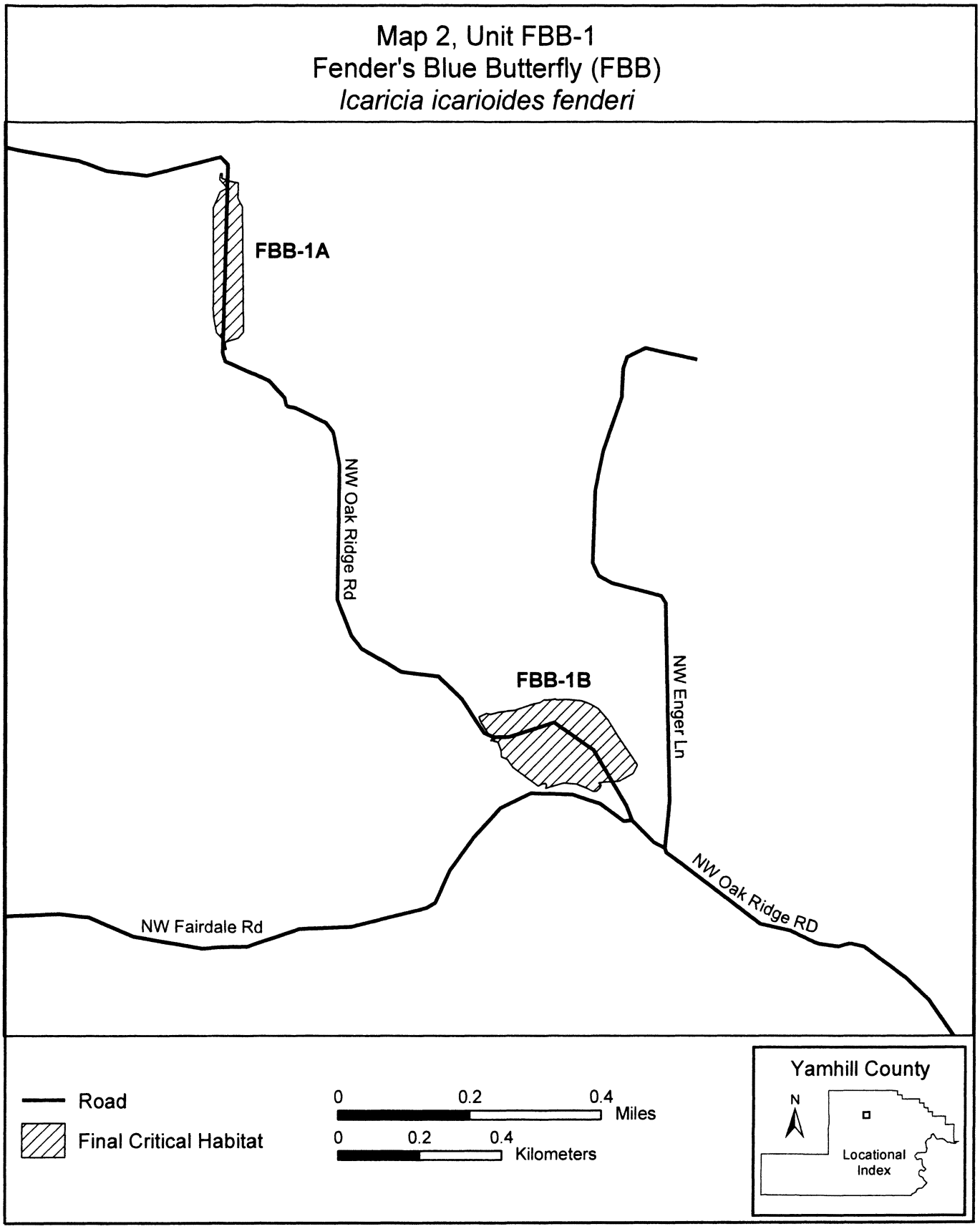

Map 1, Index Map
Fender's Blue Butterfly (FBB)
Icaricia icariodes fenderi
Washington
Tillamook
FBB-1
FBB-2
Yamhill
Clackamas
PACIFIC OCEAN
FBB-3
FBB-4
Polk
FBB-5
Marion
FBB-6
Lincoln
FBB-7
FBB-8
FBB-9
Linn
Benton
FBB-10
Lane
FBB-13
FBB-11
FBB-12
County Boundary
Final Critical Habitat
0 10 20 Miles
0 10 20 Kilometers
Oregon
N
Locational Index

(6) Unit 1 for Fender's blue butterfly (FBB–1), Yamhill County, Oregon.

(i) Unit 1A (FBB–1A): 477069, 5022493; 477070, 5022487; 477067, 5022487; 477065, 5022493; 477063, 5022498; 477063, 5022510; 477046, 5022526; 477039, 5022566; 477039, 5022576; 477038, 5022585; 477039, 5022591; 477039, 5022824; 477055, 5022862; 477073, 5022873; 477056, 5022893; 477056, 5022901; 477057, 5022907; 477061, 5022907; 477060, 5022896; 477081, 5022888; 477101, 5022884; 477099, 5022848; 477110, 5022829; 477111, 5022528; 477098, 5022513; 477069, 5022504; 477067, 5022498; 477069, 5022493.

(ii) Unit 1B (FBB–1B): 477876, 5021643; 477881, 5021641; 477902, 5021642; 477941, 5021640; 477957, 5021634; 477983, 5021620; 478008, 5021592; 478031, 5021554; 478078, 5021484; 478068, 5021464; 478035, 5021445; 477996, 5021442; 477983, 5021440; 477989, 5021435; 477986, 5021427; 477979, 5021419; 477968, 5021420; 477956, 5021427; 477931, 5021437; 477898, 5021440; 477878, 5021434; 477854, 5021427; 477857, 5021435; 477855, 5021439; 477846, 5021438; 477836, 5021433; 477812, 5021449; 477790, 5021465; 477773, 5021478; 477759, 5021499; 477745, 5021504; 477743, 5021519; 477744, 5021519; 477737, 5021537; 477732, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477730, 5021541; 477730, 5021541; 477729, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477725, 5021543; 477724, 5021543; 477724, 5021543; 477724, 5021543; 477723, 5021543; 477723, 5021543; 477723, 5021543; 477722, 5021543; 477722, 5021544; 477721, 5021544; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477720, 5021545; 477720, 5021545; 477720, 5021545; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477724, 5021545; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477727, 5021543; 477728, 5021543; 477729, 5021543; 477715, 5021554; 477698, 5021582; 477695, 5021586; 477695, 5021589; 477690, 5021600; 477691, 5021601; 477707, 5021609; 477719, 5021607; 477739, 5021612; 477777, 5021616; 477823, 5021631; 477839, 5021635; 477849, 5021641; 477867, 5021641; 477876, 5021643.

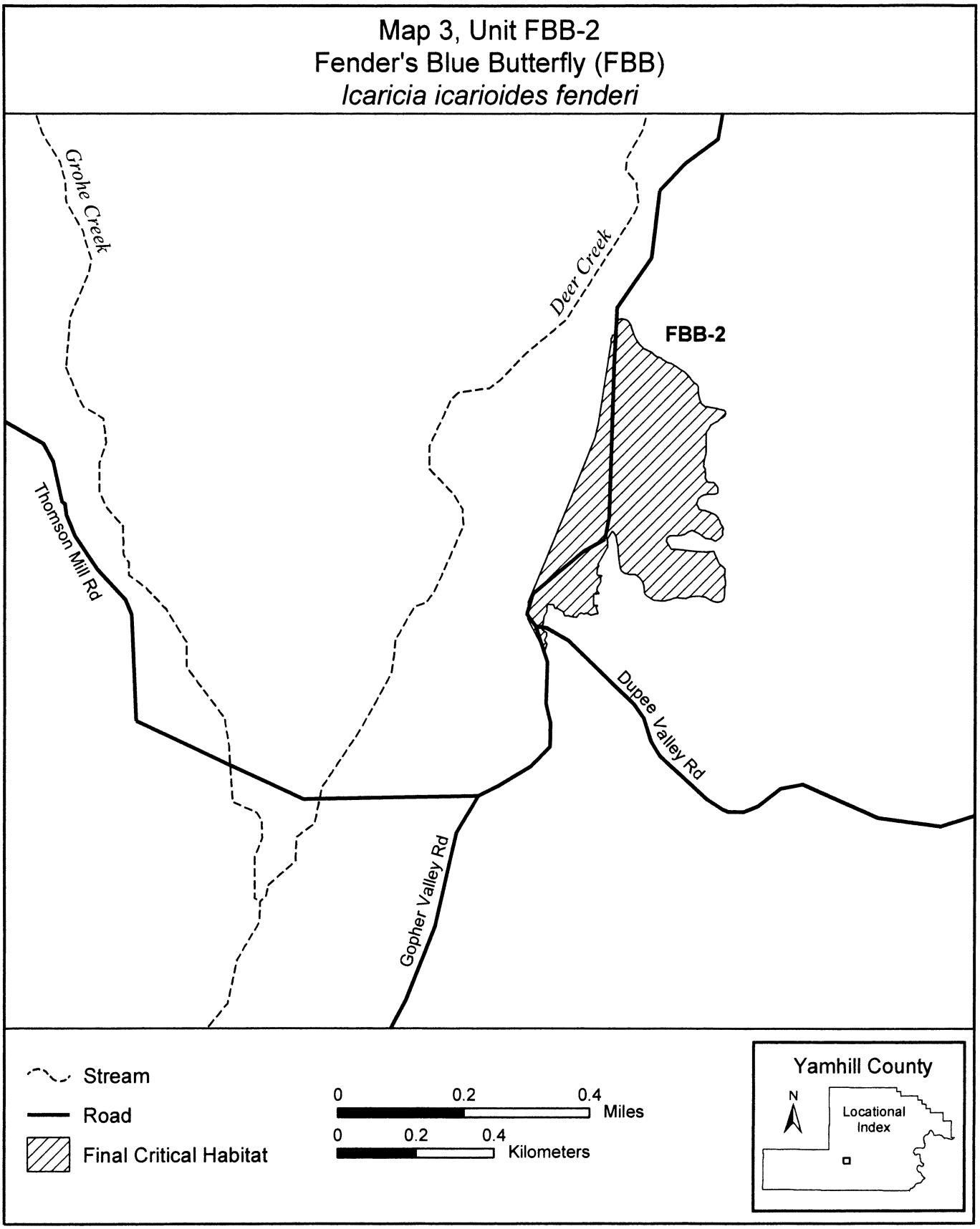
(iii) Note: Map 2 (Unit 1 for Fender's blue butterfly (FBB–1)) follows:


Map 2, Unit FBB-1
Fender's Blue Butterfly (FBB)
Icaricia icarioides fenderi
FBB-1A
NW Oak Ridge Rd
FBB-1B
NW Enger Ln
NW Oak Ridge RD
NW Fairdale Rd
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Yamhill County
N
Locational Index

(7) Unit 2 for Fender's blue butterfly (FBB–2), Yamhill County, Oregon.

(i) Unit 2 (FBB–2): 470959, 5003231; 470965, 5003226; 470972, 5003226; 470984, 5003224; 470992, 5003223; 471004, 5003220; 471012, 5003218; 471016, 5003215; 471018, 5003209; 471014, 5003202; 471011, 5003200; 471006, 5003198; 470998, 5003191; 470991, 5003187; 470988, 5003186; 470981, 5003180; 470977, 5003176; 470973, 5003168; 470970, 5003165; 470968, 5003159; 470968, 5003151; 470968, 5003132; 470968, 5003123; 470967, 5003109; 470965, 5003099; 470962, 5003090; 470961, 5003075; 470965, 5003070; 470966, 5003065; 470967, 5003055; 470965, 5003048; 470969, 5003041; 470974, 5003036; 470979, 5003036; 470984, 5003035; 470986, 5003035; 470990, 5003032; 470995, 5003027; 470998, 5003022; 470998, 5003015; 470998, 5003010; 470994, 5003007; 470988, 5003006; 470977, 5003006; 470973, 5003006; 470963, 5003004; 470957, 5003001; 470949, 5002996; 470947, 5002994; 470945, 5002987; 470944, 5002981; 470946, 5002976; 470949, 5002967; 470958, 5002964; 470965, 5002964; 470973, 5002962; 470981, 5002958; 470988, 5002955; 470994, 5002951; 470999, 5002946; 471004, 5002937; 471005, 5002932; 471010, 5002924; 471012, 5002918; 471010, 5002913; 471011, 5002902; 471003, 5002893; 470992, 5002886; 470982, 5002892; 470966, 5002893; 470956, 5002901; 470945, 5002909; 470932, 5002914; 470925, 5002911; 470914, 5002904; 470905, 5002901; 470893, 5002900; 470876, 5002901; 470868, 5002895; 470867, 5002887; 470879, 5002867; 470888, 5002866; 470935, 5002861; 470970, 5002859; 470988, 5002861; 470991, 5002853; 470998, 5002837; 471002, 5002828; 471012, 5002821; 471016, 5002816; 471015, 5002796; 471017, 5002785; 471017, 5002776; 471016, 5002766; 471015, 5002751; 471014, 5002740; 471012, 5002737; 471008, 5002734; 470998, 5002731; 470988, 5002734; 470981, 5002737; 470975, 5002739; 470967, 5002744; 470959, 5002745; 470951, 5002747; 470943, 5002747; 470929, 5002745; 470924, 5002744; 470917, 5002740; 470908, 5002741; 470894, 5002743; 470884, 5002741; 470878, 5002739; 470871, 5002737; 470865, 5002735; 470861, 5002735; 470853, 5002735; 470843, 5002736; 470834, 5002737; 470826, 5002742; 470819, 5002745; 470814, 5002751; 470811, 5002758; 470811, 5002764; 470809, 5002774; 470805, 5002784; 470801, 5002791; 470797, 5002795; 470787, 5002802; 470780, 5002802; 470772, 5002802; 470760, 5002805; 470752, 5002811; 470750, 5002818; 470747, 5002830; 470746, 5002840; 470744, 5002861; 470743, 5002874; 470740, 5002886; 470738, 5002896; 470735, 5002904; 470731, 5002910; 470729, 5002911; 470716, 5002892; 470717, 5002872; 470704, 5002848; 470692, 5002827; 470696, 5002824; 470691, 5002816; 470690, 5002804; 470692, 5002800; 470703, 5002799; 470698, 5002794; 470700, 5002783; 470695, 5002776; 470691, 5002769; 470690, 5002762; 470695, 5002753; 470682, 5002753; 470682, 5002723; 470692, 5002723; 470689, 5002717; 470691, 5002709; 470694, 5002702; 470684, 5002700; 470675, 5002699; 470665, 5002704; 470657, 5002701; 470651, 5002704; 470645, 5002701; 470640, 5002694; 470623, 5002696; 470617, 5002697; 470608, 5002697; 470604, 5002707; 470589, 5002716; 470582, 5002715; 470580, 5002725; 470564, 5002726; 470563, 5002707; 470555, 5002695; 470553, 5002676; 470548, 5002670; 470553, 5002660; 470562, 5002655; 470562, 5002646; 470557, 5002635; 470564, 5002625; 470557, 5002608; 470514, 5002689; 470514, 5002732; 470561, 5002844; 470604, 5002950; 470685, 5003149; 470688, 5003164; 470693, 5003185; 470725, 5003387; 470725, 5003399; 470728, 5003400; 470728, 5003406; 470733, 5003407; 470738, 5003441; 470741, 5003444; 470749, 5003447; 470755, 5003446; 470764, 5003444; 470769, 5003441; 470775, 5003430; 470778, 5003422; 470780, 5003416; 470782, 5003411; 470787, 5003400; 470790, 5003393; 470794, 5003387; 470797, 5003383; 470810, 5003372; 470817, 5003367; 470829, 5003362; 470836, 5003356; 470841, 5003352; 470852, 5003349; 470856, 5003345; 470858, 5003343; 470869, 5003337; 470878, 5003335; 470891, 5003328; 470895, 5003325; 470901, 5003320; 470914, 5003313; 470925, 5003301; 470930, 5003295; 470937, 5003286; 470945, 5003282; 470948, 5003277; 470948, 5003271; 470948, 5003260; 470951, 5003247; 470955, 5003235; 470959, 5003231.

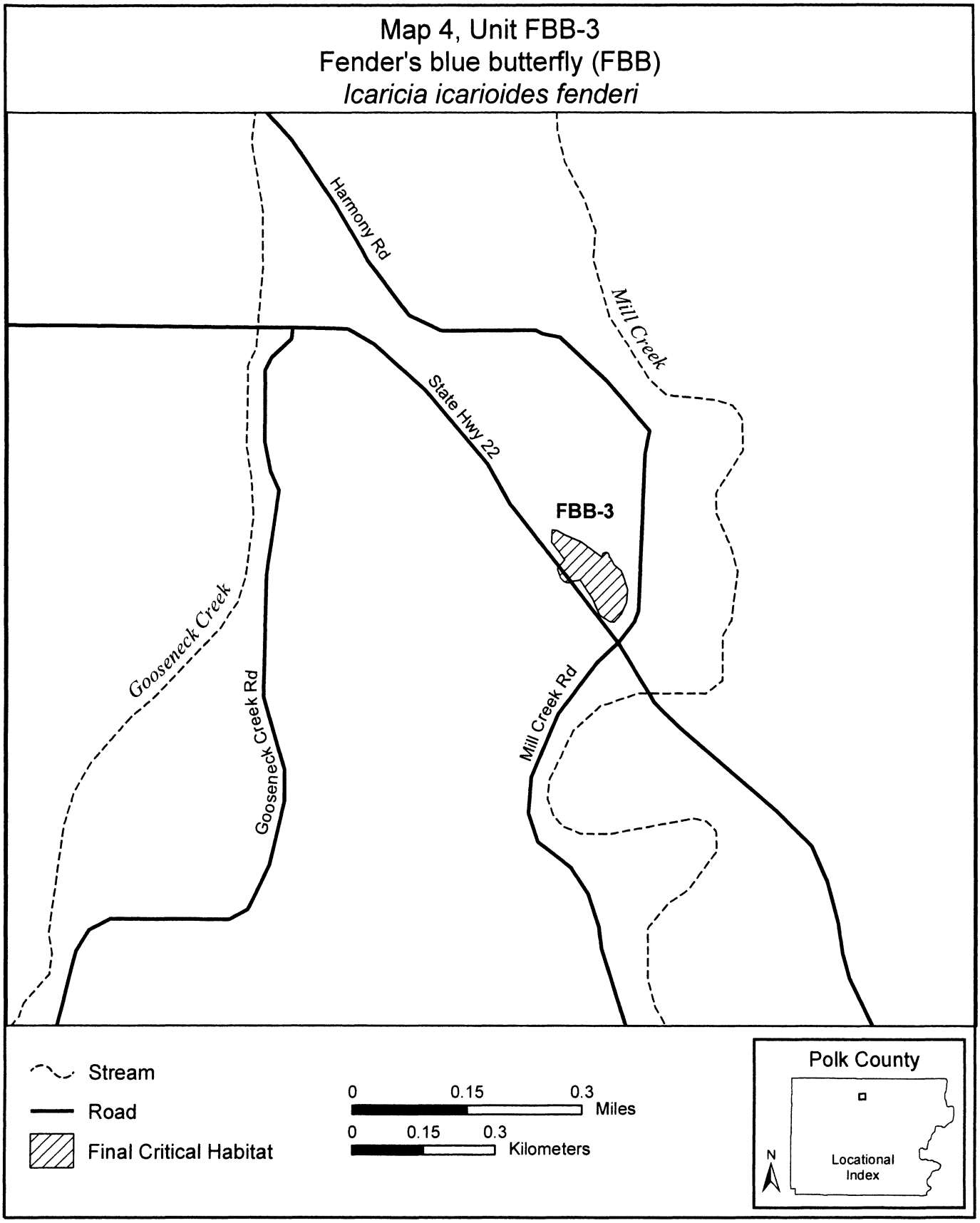
(ii) Note: Map 3 (Unit 2 for Fender's blue butterfly (FBB–2)) follows:


Map 3, Unit FBB-2
Fender's Blue Butterfly (FBB)
Icaricia icarioides fenderi
Grohe Creek
Deer Creek
FBB-2
Thomson Mill Rd
Dupee Valley Rd
Gopher Valley Rd
Stream
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Yamhill County
N
Locational Index

(8) Unit 3 for Fender's blue butterfly (FBB–3), Polk County, Oregon.

(i) Unit 3 (FBB–3): 466744, 4985295; 466788, 4985264; 466788, 4985266; 466788, 4985267; 466788, 4985268; 466789, 4985269; 466789, 4985270; 466790, 4985271; 466791, 4985272; 466792, 4985273; 466793, 4985273; 466795, 4985273; 466796, 4985274; 466797, 4985273; 466798, 4985273; 466800, 4985272; 466800, 4985272; 466801, 4985271; 466802, 4985270; 466802, 4985269; 466803, 4985267; 466803, 4985266; 466803, 4985265; 466802, 4985264; 466805, 4985263; 466814, 4985246; 466828, 4985234; 466834, 4985222; 466841, 4985196; 466839, 4985170; 466828, 4985145; 466814, 4985129; 466805, 4985129; 466783, 4985143; 466767, 4985178; 466742, 4985216; 466725, 4985214; 466725, 4985212; 466721, 4985211; 466718, 4985210; 466715, 4985211; 466711, 4985212; 466707, 4985213; 466700, 4985220; 466694, 4985237; 466694, 4985239; 466694, 4985241; 466696, 4985243; 466710, 4985258; 466681, 4985295; 466683, 4985320; 466691, 4985320; 466712, 4985309; 466744, 4985295.

(ii) Note: Map 4 (Unit 3 for Fender's blue butterfly (FBB–3)) follows:



BILLING CODE 4310–55–C

(9) Unit 4 for Fender's blue butterfly (FBB–4), Polk County, Oregon.

(i) Unit 4A (FBB–4A): 480420, 4981038; 480415, 4980660; 480465, 4980658; 480509, 4980632; 480539, 4980585; 480559, 4980485; 480655, 4980012; 480670, 4980021; 480700, 4980045; 480721, 4980066; 480736, 4980087; 480757, 4980126; 480772, 4980165; 480790, 4980221; 480805, 4980257; 480811, 4980275; 480850, 4980311; 480865, 4980329; 480892, 4980347; 480943, 4980338; 480973, 4980332; 480997, 4980317; 481021, 4980302; 481036, 4980287; 481093, 4980302; 481105, 4980299; 481150, 4980293; 481188, 4980278; 481215, 4980266; 481218, 4980239; 481272, 4980218; 481290, 4980218; 481335, 4980218; 481371, 4980215; 481401, 4980212; 481446, 4980212; 481473, 4980221; 481482, 4980236; 481506, 4980254; 481542, 4980257; 481584, 4980257; 481617, 4980251; 481719, 4980272; 481776, 4980281; 481926, 4980287; 482124, 4980275; 482147, 4980262; 482161, 4980236; 482177, 4980217; 482190, 4980197; 482191, 4980181; 482193, 4980161; 482184, 4980150; 482154, 4980150; 482109, 4980135; 482067, 4980117; 482058, 4980075; 482052, 4980027; 481998, 4980024; 481977, 4980018; 481959, 4980003; 481938, 4980003; 481920, 4980009; 481899, 4980015; 481875, 4980003; 481866, 4979937; 481473, 4979934; 481476, 4979898; 481476, 4979835; 481482, 4979793; 481470, 4979754; 481464, 4979730; 481455, 4979703; 481434, 4979682; 481413, 4979649; 481380, 4979628; 481338, 4979625; 481293, 4979619; 481248, 4979613; 481233, 4979601; 481215, 4979577; 481194, 4979562; 481150, 4979505; 481120, 4979448; 481099, 4979418; 481069, 4979382; 481039, 4979352; 481018, 4979334; 480985, 4979322; 480928, 4979319; 480868, 4979313; 480835, 4979310; 480805, 4979313; 480781, 4979304; 480739, 4979268; 480703, 4979235; 480679, 4979211; 480667, 4979229; 480664, 4979265; 480664, 4979320; 480631, 4979301; 480562, 4979290; 480500, 4979319; 480430, 4979365; 480364, 4979418; 480295, 4979482; 480192, 4979594; 480162, 4979636; 480146, 4979629; 480153, 4979478; 480132, 4979469; 480081, 4979470; 480069, 4979463; 480014, 4979470; 479987, 4979491; 479974, 4979497; 479955, 4979499; 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480330, 4980984; 480356, 4981000; 480386, 4981021; 480405, 4981037; 480420, 4981038.

(ii) Unit 4B (FBB–4B): 480860, 4983078; 480881, 4983054; 480869, 4983018; 480854, 4983006; 480830, 4982992; 480818, 4982974; 480821, 4982950; 480821, 4982944; 480821, 4982923; 480836, 4982905; 480845, 4982908; 480860, 4982911; 480872, 4982923; 480884, 4982938; 480896, 4982953; 480902, 4982965; 480917, 4982974; 480962, 4982956; 480968, 4982950; 480977, 4982947; 480977, 4982932; 480974, 4982905; 480992, 4982911; 481046, 4982920; 481070, 4982926; 481106, 4982932; 481157, 4982941; 481178, 4982941; 481184, 4982944; 481196, 4982950; 481205, 4982950; 481220, 4982950; 481229, 4982950; 481244, 4982956; 481253, 4982953; 481280, 4982962; 481337, 4982953; 481364, 4982932; 481364, 4982914; 481361, 4982848; 481361, 4982812; 481367, 4982770; 481355,

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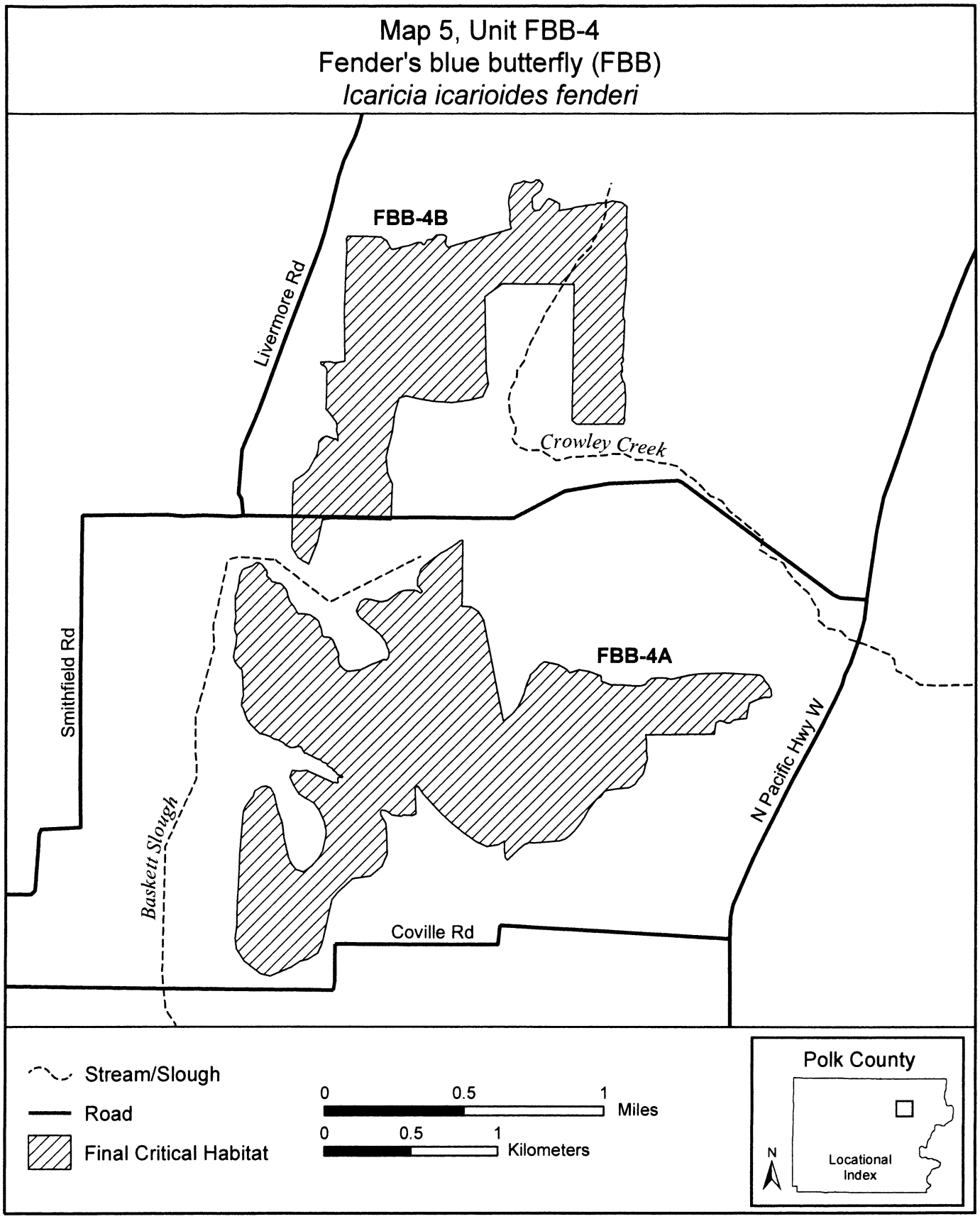
(iii) Note: Map 5 (Unit 4 for Fender's blue butterfly (FBB–4)) follows:

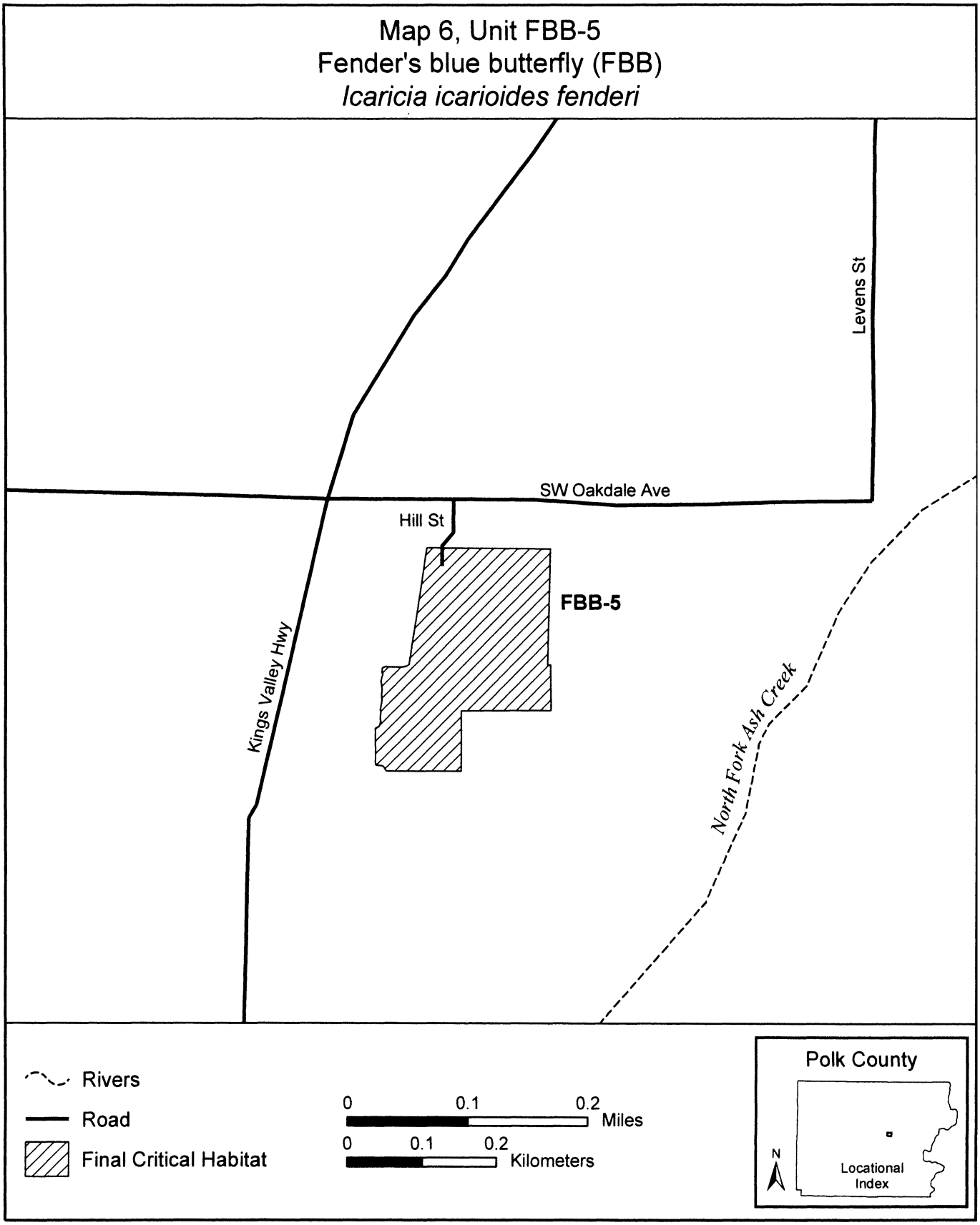
BILLING CODE 4310–55–P


Map 5, Unit FBB-4
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
FBB-4B
FBB-4A
Livermore Rd
Crowley Creek
Smithfield Rd
Baskett Slough
N Pacific Hwy W
Coville Rd
Stream/Slough
Road
Final Critical Habitat
0
0.5
1
Miles
0
0.5
1
Kilometers
Polk County
N
Locational Index

(10) Unit 5 for Fender's blue butterfly (FBB–5), Polk County, Oregon.

(i) Unit 5 (FBB–5): 474272, 4973321; 474269, 4973168; 474273, 4973168; 474274, 4973107; 474153, 4973107; 474153, 4973026; 474053, 4973026; 474051, 4973029; 474049, 4973032; 474047, 4973034; 474042, 4973034; 474039, 4973035; 474038, 4973084; 474044, 4973086; 474045, 4973092; 474045, 4973097; 474045, 4973104; 474045, 4973109; 474046, 4973116; 474047, 4973121; 474046, 4973128; 474047, 4973134; 474047, 4973139; 474046, 4973146; 474047, 4973152; 474048, 4973154; 474047, 4973158; 474048, 4973164; 474049, 4973164; 474052, 4973165; 474054, 4973165; 474061, 4973165; 474067, 4973165; 474074, 4973165; 474079, 4973166; 474083, 4973168; 474098, 4973263; 474107, 4973322; 474272, 4973321.

(ii) Note: Map 6 (Unit 5 for Fender's blue butterfly (FBB–5)) follows:

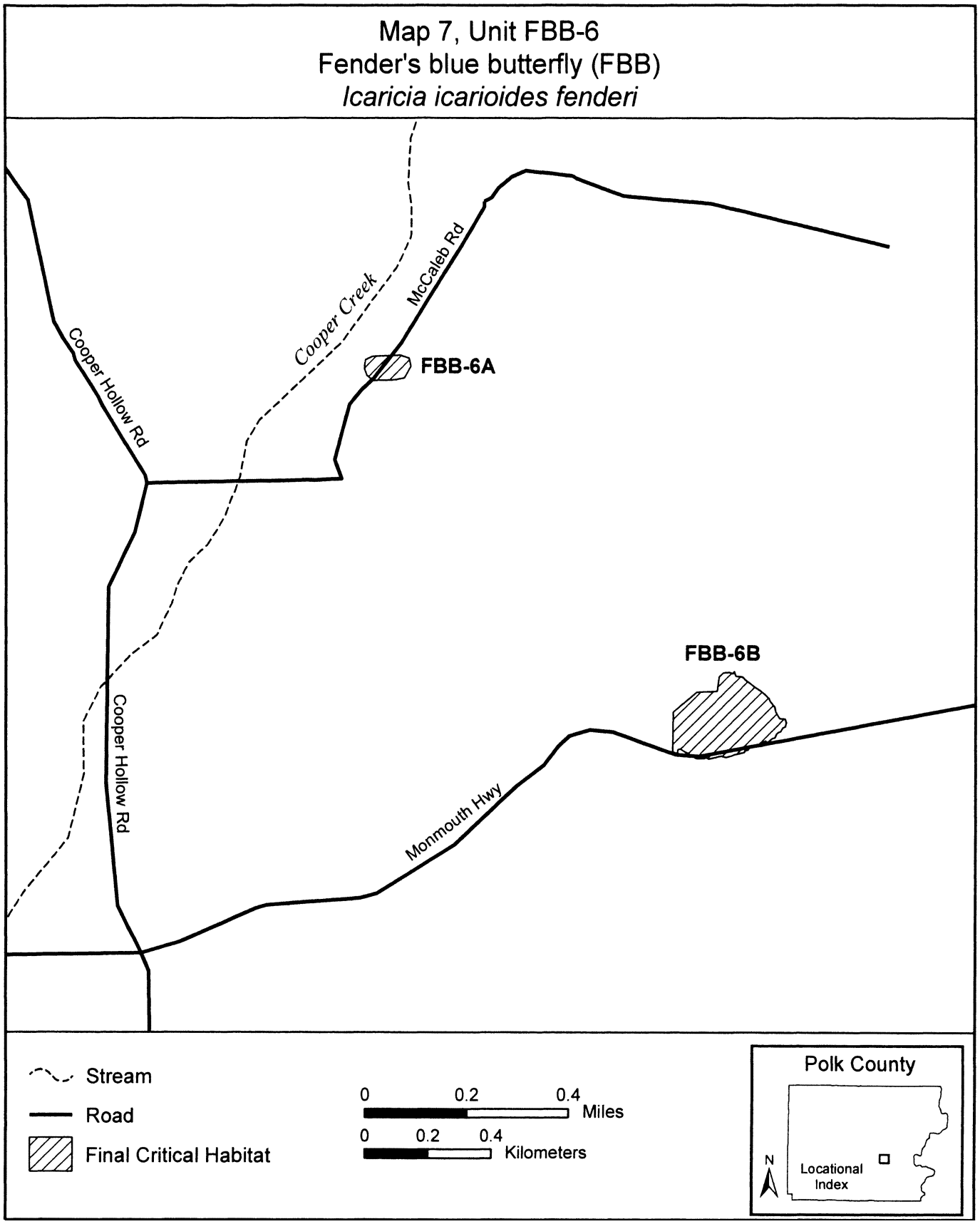

Map 6, Unit FBB-5
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Levens St
SW Oakdale Ave
Hill St
FBB-5
Kings Valley Hwy
North Fork Ash Creek
Rivers
Road
Final Critical Habitat
0
0.1
0.2
Miles
0
0.1
0.2
Kilometers
Polk County
N
Locational Index

(11) Unit 6 for Fender's blue butterfly (FBB–6), Polk County, Oregon.

(i) Unit 6A (FBB–6A): 475279, 4966872; 475243, 4966871; 475222, 4966886; 475213, 4966910; 475218, 4966935; 475240, 4966947; 475327, 4966950; 475355, 4966941; 475361, 4966915; 475341, 4966880; 475311, 4966874; 475279, 4966872.

(ii) Unit 6B (FBB–6B): 476378, 4965968; 476384, 4965952; 476405, 4965950; 476419, 4965937; 476444, 4965919; 476463, 4965906; 476473, 4965897; 476487, 4965882; 476493, 4965872; 476506, 4965856; 476509, 4965842; 476521, 4965821; 476538, 4965819; 476542, 4965808; 476540, 4965796; 476532, 4965791; 476525, 4965780; 476519, 4965777; 476512, 4965770; 476507, 4965760; 476499, 4965757; 476493, 4965753; 476484, 4965744; 476477, 4965750; 476466, 4965743; 476463, 4965733; 476448, 4965733; 476435, 4965730; 476427, 4965729; 476423, 4965722; 476413, 4965718; 476411, 4965713; 476384, 4965707; 476355, 4965699; 476346, 4965699; 476339, 4965702; 476299, 4965693; 476290, 4965699; 476285, 4965694; 476259, 4965694; 476247, 4965701; 476238, 4965709; 476222, 4965716; 476209, 4965725; 476202, 4965722; 476202, 4965709; 476186, 4965715; 476186, 4965722; 476188, 4965840; 476262, 4965902; 476327, 4965906; 476329, 4965931; 476331, 4965951; 476344, 4965964; 476364, 4965964; 476376, 4965961; 476378, 4965968.

(iii) Note: Map 7 (Unit 6 for Fender's blue butterfly (FBB–6)) follows:


Map 7, Unit FBB-6
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Cooper Creek
McCaleb Rd
Cooper Hollow Rd
FBB-6A
FBB-6B
Cooper Hollow Rd
Monmouth Hwy
Stream
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Polk County
N
Locational Index

BILLING CODE 4310–55–C

(12) Units 7, 8, and 9 for Fender's blue butterfly (FBB–7, FBB–8, and FBB–9), Benton County, Oregon.

(i) Unit 7 (FBB–7): 472041, 4940614; 472041, 4940616; 472040, 4940619; 472041, 4940623; 472043, 4940628; 472043, 4940632; 472043, 4940636; 472043, 4940639; 472045, 4940641; 472047, 4940642; 472048, 4940642; 472051, 4940646; 472051, 4940651; 472051, 4940655; 472051, 4940658; 472051, 4940660; 472050, 4940665; 472053, 4940667; 472057, 4940668; 472060, 4940670; 472063, 4940668; 472066, 4940668; 472070, 4940667; 472070, 4940663; 472073, 4940660; 472078, 4940658; 472080, 4940661; 472083, 4940662; 472087, 4940663; 472090, 4940662; 472092, 4940663; 472095, 4940664; 472100, 4940664; 472104, 4940663; 472106, 4940661; 472107, 4940659; 472109, 4940656; 472113, 4940654; 472115, 4940653; 472115, 4940650; 472117, 4940648; 472120, 4940647; 472121, 4940645; 472121, 4940641; 472122, 4940640; 472123, 4940636; 472124, 4940633; 472121, 4940632; 472116, 4940631; 472114, 4940629; 472112, 4940626; 472110, 4940622; 472110, 4940618; 472109, 4940613; 472108, 4940609; 472104, 4940605; 472102, 4940599; 472103, 4940594; 472104, 4940590; 472105, 4940586; 472105, 4940586; 472104, 4940582; 472100, 4940579; 472093, 4940558; 472089, 4940535; 472102, 4940527; 472103, 4940510; 472115, 4940498; 472124, 4940503; 472127, 4940510; 472139, 4940515; 472141, 4940507; 472138, 4940499; 472146, 4940494; 472164, 4940503; 472202, 4940512; 472206, 4940531; 472188, 4940534; 472187, 4940543; 472200, 4940547; 472206, 4940555; 472202, 4940572; 472218, 4940570; 472251, 4940569; 472260, 4940564; 472276, 4940554; 472282, 4940544; 472285, 4940531; 472293, 4940519; 472286, 4940510; 472283, 4940499; 472297, 4940500; 472300, 4940495; 472311, 4940488; 472311, 4940478; 472320, 4940474; 472338, 4940465; 472348, 4940472; 472357, 4940472; 472362, 4940461; 472368, 4940442; 472375, 4940417; 472375, 4940401; 472375, 4940393; 472376, 4940386; 472381, 4940384; 472384, 4940372; 472392, 4940365; 472407, 4940365; 472417, 4940360; 472431, 4940353; 472442, 4940342; 472442, 4940330; 472448, 4940313; 472451, 4940311; 472434, 4940281; 472417, 4940275; 472391, 4940279; 472389, 4940288; 472373, 4940293; 472366, 4940287; 472355, 4940295; 472355, 4940315; 472332, 4940334; 472332, 4940335; 472330, 4940336; 472301, 4940344; 472299, 4940360; 472299, 4940361; 472311, 4940365; 472327, 4940351; 472329, 4940349; 472342, 4940348; 472343, 4940367; 472356, 4940366; 472367, 4940381; 472367, 4940397; 472363, 4940405; 472338, 4940405; 472319, 4940428; 472305, 4940430; 472296, 4940445; 472281, 4940449; 472273, 4940443; 472273, 4940443; 472251, 4940425; 472164, 4940437; 472163, 4940436; 472159, 4940437; 472152, 4940450; 472136, 4940452; 472113, 4940447; 472102, 4940421; 472101, 4940419; 472071, 4940414; 472042, 4940422; 472034, 4940405; 472014, 4940407; 472014, 4940392; 472010, 4940384; 471999, 4940374; 471994, 4940367; 471993, 4940345; 471971, 4940342; 471946, 4940345; 471939, 4940342; 471939, 4940329; 471938, 4940303; 471930, 4940288; 471928, 4940269; 471917, 4940269; 471905, 4940275; 471902, 4940293; 471910, 4940305; 471919, 4940326; 471922, 4940338; 471932, 4940351; 471948, 4940354; 471966, 4940360; 471970, 4940368; 471976, 4940385; 471993, 4940398; 472001, 4940410; 472018, 4940418; 472024, 4940429; 472024, 4940445; 472026, 4940447; 472041, 4940454; 472049, 4940482; 472069, 4940490; 472078, 4940515; 472072, 4940521; 472074, 4940530; 472082, 4940534; 472085, 4940542; 472082, 4940565; 472080, 4940574; 472072, 4940583; 472072, 4940587; 472072, 4940587; 472072, 4940590; 472071, 4940592; 472071, 4940595; 472072, 4940596; 472073, 4940596; 472074, 4940597; 472079, 4940597; 472079, 4940602; 472077, 4940609; 472072, 4940612; 472070, 4940612; 472067, 4940612; 472065, 4940611; 472061, 4940613; 472056, 4940616; 472048, 4940615; 472046, 4940613; 472045, 4940612; 472045, 4940611; 472043, 4940611; 472041, 4940614; 472041, 4940614.

(ii) Unit 8 (FBB–8): 466807, 4938996; 466822, 4938987; 466857, 4938963; 466860, 4938942; 466813, 4938811; 466811, 4938793; 466828, 4938769; 466941, 4938694; 466944, 4938670; 467002, 4938673; 467028, 4938645; 467029, 4938608; 467021, 4938582; 466984, 4938561; 466908, 4938577; 466832, 4938387; 466805, 4938237; 466934, 4938170; 466973, 4938111; 466957, 4937968; 467029, 4937886; 467194, 4937886; 467195, 4937857; 467365, 4937876; 467379, 4937926; 467611, 4937920; 467606, 4938003; 467523, 4938171; 467492, 4938190; 467460, 4938377; 467542, 4938516; 467858, 4938596; 467858, 4938879; 467912, 4938876; 467912, 4939023; 467936, 4939032; 468294, 4939023; 468330, 4939008; 468384, 4939008; 468414, 4938891; 468339, 4938736; 468339, 4938638; 468297, 4938551; 468324, 4938509; 468427, 4938482; 468488, 4938484; 468601, 4938464; 468666, 4938425; 468749, 4938490; 468859, 4938476; 468989, 4938412; 469013, 4938386; 468981, 4938369; 468949, 4938351; 468934, 4938305; 468966, 4938282; 469004, 4938261; 469027, 4938227; 469137, 4938256; 469181, 4938244; 469192, 4938198; 469186, 4938151; 469169, 4938119; 469120, 4938105; 469076, 4938079; 469056, 4938041; 469013, 4938018; 468978, 4937948; 469007, 4937940; 469100, 4937954; 469143, 4937931; 469204, 4937919; 469276, 4937905; 469320, 4937899; 469314, 4937864; 469256, 4937859; 469230, 4937821; 469184, 4937806; 469143, 4937789; 469088, 4937737; 469053, 4937685; 469027, 4937656; 469050, 4937604; 469036, 4937589; 468981, 4937569; 468946, 4937583; 468923, 4937635; 468874, 4937633; 468853, 4937615; 468833, 4937636; 468842, 4937659; 468819, 4937699; 468833, 4937720; 468876, 4937722; 468903, 4937746; 468899, 4937788; 468871, 4937818; 468856, 4937864; 468824, 4937879; 468816, 4937847; 468752, 4937824; 468723, 4937792; 468642, 4937746; 468338, 4937844; 468259, 4937905; 468216, 4937917; 468204, 4937864; 468112, 4937768; 468118, 4937725; 468124, 4937663; 468155, 4937619; 468175, 4937569; 468182, 4937545; 468127, 4937546; 468085, 4937549; 468046, 4937531; 468031, 4937507; 468007, 4937539; 467971, 4937573; 467970, 4937597; 467920, 4937618; 467892, 4937661; 467875, 4937662; 467845, 4937645; 467840, 4937641; 467841, 4937621; 467850, 4937503; 467896, 4937426; 467889, 4937381; 467879, 4937358; 467844, 4937352; 467717, 4937354; 467525, 4937362; 467217, 4937372; 467186, 4937381; 467066, 4937388; 467055, 4937377; 467009, 4937373; 466961, 4937380; 466915, 4937382; 466860, 4937392; 466783, 4937400; 466746, 4937390; 466750, 4937358; 466727, 4937335; 466713, 4937308; 466667, 4937298; 466654, 4937262; 466659, 4937211; 466686, 4937130; 466701, 4937088; 466710, 4937034; 466703, 4937031; 466705, 4937011; 466705, 4936978; 466695, 4936938; 466754, 4936891; 466792, 4936884; 466800, 4936874; 466824, 4936872; 466851, 4936874; 466877, 4936883; 466901, 4936894; 466913, 4936893; 466920, 4936885; 466932, 4936902; 466948, 4936901; 466959, 4936896; 466985, 4936886; 467030, 4936878; 467052, 4936866; 467075, 4936863; 467076, 4936853; 467057, 4936837; 467040, 4936823; 467030, 4936810; 466999, 4936794;

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(iii) Unit 9 (FBB–9): 472296, 4933737; 472312, 4933733; 472316, 4933734; 472317, 4933734; 472317, 4933733; 472317, 4933732; 472317, 4933732; 472315, 4933731; 472319, 4933730; 472325, 4933708; 472324, 4933707; 472325, 4933685; 472276, 4933663; 472265, 4933662; 472199, 4933648; 472192, 4933641; 472149, 4933621; 472144, 4933615; 472143, 4933611; 472140, 4933608; 472139, 4933604; 472140, 4933601; 472139, 4933599; 472138, 4933594; 472140, 4933589; 472140, 4933584; 472142, 4933581; 472148, 4933580; 472145, 4933576; 472145, 4933572; 472150, 4933570; 472159, 4933573; 472165, 4933575; 472169, 4933578; 472176, 4933582; 472182, 4933584; 472189, 4933585; 472194, 4933582; 472198, 4933579; 472201, 4933574; 472201, 4933571; 472201, 4933566; 472199, 4933561; 472194, 4933558; 472189, 4933556; 472188, 4933552; 472185, 4933550; 472184, 4933546; 472179, 4933544; 472176, 4933540; 472174, 4933534; 472169, 4933534; 472163, 4933533; 472158, 4933532; 472154, 4933529; 472151, 4933526; 472147, 4933525; 472146, 4933518; 472144, 4933513; 472142, 4933509; 472146, 4933505; 472147, 4933500; 472144, 4933496; 472144, 4933489; 472147, 4933487; 472148, 4933475; 472148, 4933469; 472149, 4933462; 472150, 4933455; 472151, 4933448; 472146, 4933447; 472146, 4933445; 472150, 4933441; 472156, 4933440; 472156, 4933436; 472151, 4933437; 472147, 4933433; 472148, 4933428; 472149, 4933421; 472146, 4933422; 472145, 4933413; 472145, 4933406; 472144, 4933395; 472147, 4933390; 472147, 4933383; 472147, 4933378; 472150, 4933375; 472151, 4933370; 472146, 4933370; 472146, 4933363; 472147, 4933342; 472148, 4933340; 472149, 4933336; 472149, 4933331; 472151, 4933321; 472151, 4933314; 472152, 4933306; 472156, 4933289; 472157, 4933267; 472158, 4933251; 472159, 4933239; 472159, 4933225; 472160, 4933213; 472161, 4933206; 472162, 4933195; 472163, 4933186; 472158, 4933167; 472147, 4933161; 472144, 4933165; 472139, 4933170; 472131, 4933175; 472127, 4933169; 472123, 4933166; 472122, 4933162; 472115, 4933158; 472111, 4933152; 472108, 4933145; 472106, 4933139; 472104, 4933137; 472104, 4933130; 472109, 4933128; 472112, 4933123; 472117, 4933124; 472121, 4933124; 472122, 4933119; 472123, 4933115; 472122, 4933112; 472118, 4933111; 472112, 4933108; 472109, 4933103; 472102, 4933103; 472096, 4933104; 472091, 4933106; 472085, 4933106; 472079, 4933107; 472074, 4933104; 472073, 4933097; 472069, 4933090; 472069, 4933086; 472067, 4933081; 472068, 4933072; 472064, 4933070; 472059, 4933071; 472053, 4933070; 472052, 4933065; 472047, 4933062; 472041, 4933063; 472039, 4933067; 472037, 4933071; 472032, 4933071; 472030, 4933071; 472027, 4933073; 472024, 4933074; 472020, 4933073; 472016, 4933073; 472010, 4933074; 472005, 4933090; 472003, 4933094; 472003, 4933101; 472007, 4933106; 472009, 4933111; 472007, 4933116; 472004, 4933116; 472004, 4933120; 472002, 4933125; 472001, 4933128; 472002, 4933134; 472004, 4933137; 472002, 4933140; 472002, 4933143; 472007, 4933146; 472009, 4933153; 472010, 4933160; 472011, 4933165; 472013, 4933170; 472016, 4933176; 472018, 4933179; 472015, 4933183; 472015, 4933186; 472019, 4933186; 472021, 4933190; 472020, 4933195; 472016, 4933198; 472011, 4933215; 472003, 4933221; 471996, 4933227; 471990, 4933231; 471989, 4933240; 471983, 4933257; 471982, 4933268; 471977, 4933277; 471976, 4933282; 471972, 4933282; 471968, 4933281; 471962, 4933280; 471962, 4933280; 471962, 4933280; 471961, 4933278; 471960, 4933276; 471958, 4933273; 471957, 4933271; 471957, 4933271; 471956, 4933271; 471956, 4933268; 471956, 4933266; 471955, 4933263; 471955, 4933260; 471955, 4933257; 471954, 4933257; 471953, 4933258; 471950, 4933257; 471947, 4933257; 471944, 4933256; 471942, 4933255; 471939, 4933253; 471936, 4933251; 471934, 4933251; 471929, 4933247; 471929, 4933247; 471929, 4933247; 471929, 4933245; 471928, 4933244; 471927, 4933242; 471925, 4933240; 471924, 4933239; 471922, 4933237; 471921, 4933237; 471919, 4933236; 471917, 4933236; 471915, 4933235; 471913, 4933236; 471911, 4933235; 471909, 4933235; 471908, 4933234; 471906, 4933234; 471904, 4933233; 471904, 4933233; 471904, 4933233; 471903, 4933233; 471902, 4933232; 471899, 4933230; 471897, 4933228; 471895, 4933227; 471894, 4933227; 471893, 4933224; 471892, 4933222; 471888, 4933220; 471884, 4933218; 471882, 4933217; 471876, 4933214; 471873, 4933212; 471870, 4933211; 471868, 4933209; 471865, 4933208; 471862, 4933207; 471859, 4933205; 471859, 4933205; 471859, 4933205; 471859, 4933203; 471854, 4933190; 471854, 4933190; 471853, 4933188; 471851, 4933183; 471851, 4933183; 471850, 4933182; 471850, 4933173; 471850, 4933171; 471850, 4933170; 471850, 4933166; 471850, 4933164; 471850, 4933162; 471850, 4933161; 471850, 4933159; 471848, 4933159; 471847, 4933158; 471846, 4933158; 471845, 4933158;

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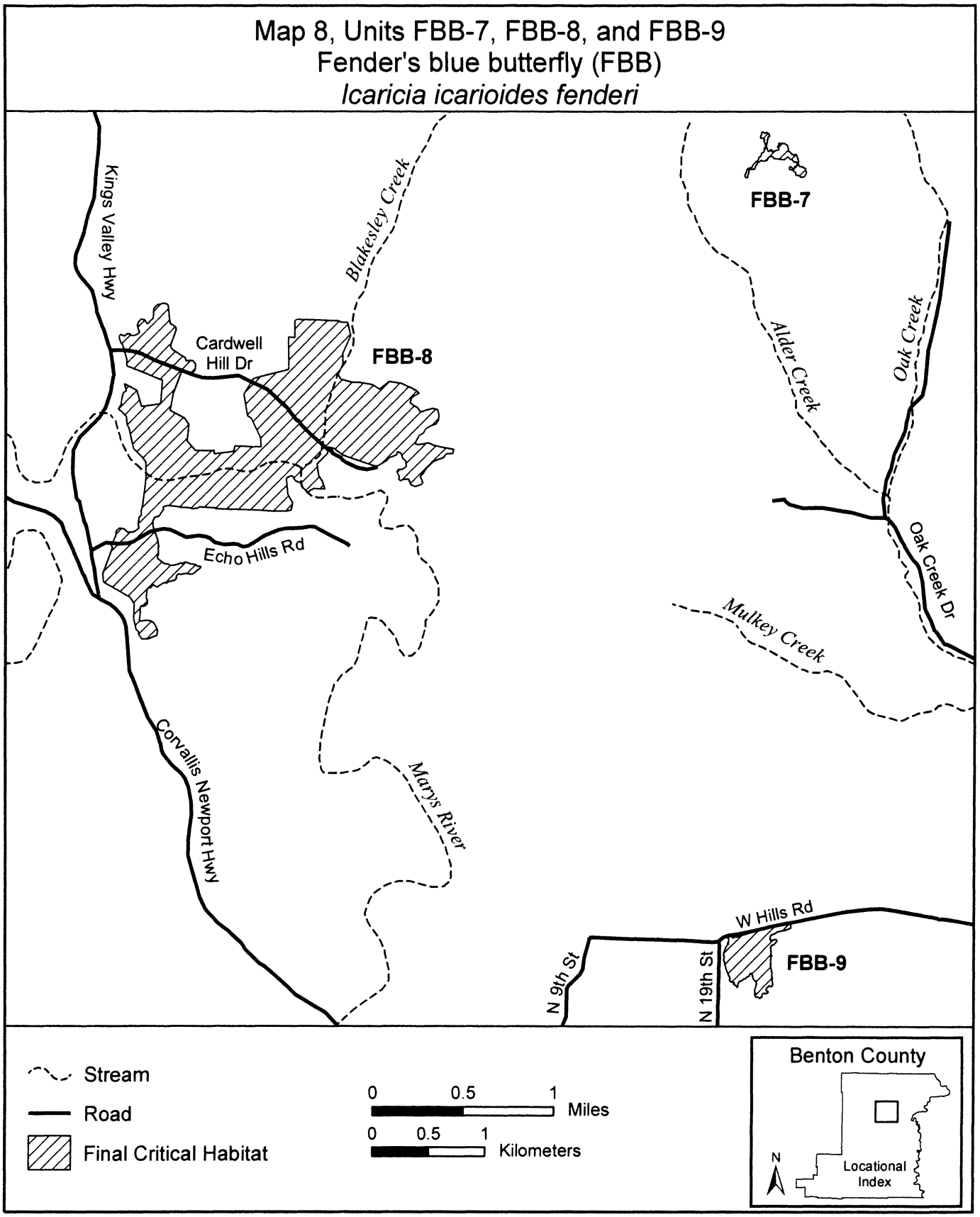
(iv) Note: Map 8 (Units 7, 8, and 9 for Fender's blue butterfly (FBB–7, FBB–8, and FBB–9)) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(13) Units 10, 11, and 12 for Fender's blue butterfly (FBB–10, FBB–11, and FBB–12) in Lane County, Oregon.

(i) Unit 10A (FBB–10A): 479362, 4883342; 479389, 4883340; 479413, 4883340; 479442, 4883333; 479454, 4883325; 479444, 4883317; 479419, 4883305; 479409, 4883299; 479403, 4883279; 479397, 4883259; 479385, 4883239; 479377, 4883216; 479371, 4883204; 479373, 4883192; 479373, 4883176; 479375, 4883162; 479371, 4883148; 479361, 4883128; 479357, 4883120; 479353, 4883108; 479365, 4883104; 479365, 4883104; 479366, 4883104; 479370, 4883102; 479372, 4883091; 479372, 4883083; 479371, 4883075; 479369, 4883061; 479365, 4883041; 479361, 4883025; 479345, 4883003; 479332, 4883007; 479332, 4883007; 479331, 4883007; 479333, 4882993; 479321, 4882977; 479305, 4882968; 479282, 4882968; 479266, 4882969; 479246, 4882973; 479246, 4882973; 479246, 4882973; 479226, 4882972; 479219, 4882977; 479213, 4882991; 479211, 4883005; 479211, 4883005; 479210, 4883009; 479204, 4883015; 479186, 4883017; 479165, 4883013; 479149, 4883013; 479135, 4883013; 479123, 4883007; 479093, 4883009; 479059, 4883003; 479026, 4883001; 479013, 4882998; 479012, 4882998; 479010, 4882997; 479004, 4882995; 479006, 4882987; 479013, 4882982; 479013, 4882980; 479010, 4882970; 478998, 4882966; 478962, 4882964; 478931, 4882967; 478927, 4882977; 478927, 4882977; 478926, 4882977; 478913, 4882973; 478897, 4882962; 478857, 4882952; 478838, 4882954; 478832, 4882961; 478821, 4882979; 478819, 4882982; 478819, 4882982; 478819, 4882982; 478819, 4882982; 478807, 4882981; 478794, 4882977; 478778, 4882977; 478764, 4882966; 478764, 4882966; 478764, 4882965; 478770, 4882954; 478792, 4882950; 478817, 4882940; 478831, 4882918; 478841, 4882904; 478851, 4882900; 478863, 4882900; 478881, 4882900; 478891, 4882876; 478891, 4882862; 478899, 4882844; 478901, 4882831; 478893, 4882823; 478881, 4882815; 478879, 4882813; 478873, 4882801; 478861, 4882797; 478853, 4882795; 478849, 4882783; 478847, 4882775; 478837, 4882765; 478813, 4882761; 478794, 4882759; 478774, 4882759; 478758, 4882759; 478744, 4882757; 478734, 4882759; 478720, 4882759; 478700, 4882761; 478682, 4882765; 478665, 4882765; 478641, 4882765; 478627, 4882775; 478609, 4882779; 478597, 4882793; 478587, 4882801; 478577, 4882815; 478561, 4882825; 478555, 4882839; 478551, 4882846; 478540, 4882852; 478530, 4882858; 478528, 4882866; 478538, 4882876; 478543, 4882886; 478545, 4882894; 478551, 4882904; 478563, 4882916; 478569, 4882922; 478577, 4882928; 478589, 4882936; 478605, 4882946; 478617, 4882956; 478623, 4882964; 478623, 4882970; 478624, 4882970; 478623, 4882973; 478627, 4882983; 478627, 4882984; 478627, 4882983; 478619, 4882997; 478595, 4883005; 478573, 4883007; 478555, 4883007; 478534, 4883009; 478508, 4883005; 478508, 4883005; 478507, 4883005; 478480, 4882999; 478454, 4882997; 478442, 4882989; 478429, 4882989; 478419, 4882997; 478419, 4882997; 478418, 4882997; 478411, 4882989; 478403, 4882979; 478397, 4882964; 478386, 4882946; 478382, 4882940; 478366, 4882933; 478352, 4882939; 478349, 4882940; 478341, 4882948; 478333, 4882956; 478333, 4882956; 478333, 4882956; 478331, 4882954; 478317, 4882944; 478296, 4882954; 478298, 4882969; 478304, 4882985; 478322, 4883013; 478329, 4883031; 478335, 4883047; 478339, 4883067; 478349, 4883088; 478361, 4883104; 478367, 4883118; 478379, 4883126; 478392, 4883133; 478403, 4883134; 478406, 4883134; 478415, 4883127; 478417, 4883117;

478417, 4883114; 478417, 4883114; 478417, 4883114; 478420, 4883108; 478422, 4883098; 478423, 4883095; 478428, 4883084; 478435, 4883079; 478441, 4883074; 478458, 4883069; 478458, 4883069; 478459, 4883069; 478484, 4883066; 478496, 4883065; 478510, 4883065; 478524, 4883065; 478536, 4883063; 478559, 4883057; 478559, 4883057; 478561, 4883057; 478583, 4883055; 478597, 4883053; 478619, 4883045; 478645, 4883029; 478659, 4883027; 478674, 4883027; 478676, 4883027; 478694, 4883032; 478694, 4883032; 478697, 4883033; 478707, 4883039; 478724, 4883031; 478728, 4883021; 478730, 4883011; 478746, 4883005; 478746, 4883005; 478746, 4883005; 478766, 4883009; 478772, 4883015; 478790, 4883005; 478790, 4883005; 478790, 4883005; 478810, 4883015; 478816, 4883037; 478816, 4883053; 478814, 4883069; 478806, 4883096; 478815, 4883107; 478859, 4883108; 478880, 4883106; 478901, 4883104; 478921, 4883108; 479004, 4883110; 479010, 4883103; 479010, 4883102; 479010, 4883102; 479212, 4883102; 479212, 4883104; 479213, 4883103; 479211, 4883128; 479213, 4883156; 479211, 4883190; 479211, 4883217; 479215, 4883247; 479211, 4883265; 479209, 4883283; 479217, 4883313; 479219, 4883337; 479239, 4883339; 479278, 4883339; 479320, 4883342; 479362, 4883342.

(ii) Unit 10B (FBB–10B): 480173, 4882467; 480173, 4882393; 480173, 4882308; 480170, 4882236; 480168, 4882173; 480168, 4882165; 480169, 4882164; 480176, 4882152; 480191, 4882150; 480226, 4882147; 480247, 4882138; 480243, 4882127; 480236, 4882109; 480232, 4882089; 480224, 4882064; 480207, 4882058; 480209, 4882042; 480209, 4882024; 480185, 4882016; 480170, 4882007; 480169, 4881966; 480191, 4881931; 480206, 4881898; 480213, 4881847; 480219, 4881787; 480246, 4881569; 480248, 4881544; 480247, 4881536; 480247, 4881524; 480239, 4881512; 480240, 4881489; 480243, 4881474; 480247, 4881442; 480243, 4881433; 480239, 4881415; 480224, 4881399; 480215, 4881399; 480210, 4881384; 480221, 4881370; 480230, 4881360; 480254, 4881347; 480271, 4881331; 480283, 4881333; 480297, 4881333; 480325, 4881335; 480338, 4881336; 480361, 4881332; 480375, 4881331; 480386, 4881325; 480394, 4881312; 480398, 4881279; 480398, 4881082; 480400, 4881032; 480399, 4881003; 480394, 4880995; 480394, 4880984; 480394, 4880984; 480360, 4880954; 480360, 4880954; 480350, 4880954; 480332, 4880958; 480316, 4880964; 480294, 4880970; 480284, 4880970; 480274, 4880966; 480261, 4880960; 480239, 4880962; 480213, 4880960; 480201, 4880950; 480179, 4880950; 480159, 4880950; 480130, 4880950; 480094, 4880944; 480080, 4880952; 480058, 4880954; 480052, 4880938; 480052, 4880920; 480044, 4880914; 480024, 4880912; 480026, 4880895; 480020, 4880883; 479997, 4880879; 479975, 4880873; 479961, 4880863; 479935, 4880849; 479917, 4880847; 479903, 4880841; 479883, 4880837; 479874, 4880825; 479874, 4880813; 479866, 4880803; 479848, 4880797; 479844, 4880779; 479848, 4880756; 479870, 4880738; 479868, 4880724; 479856, 4880702; 479872, 4880690; 479870, 4880674; 479856, 4880668; 479862, 4880650; 479876, 4880631; 479891, 4880621; 479901, 4880615; 479909, 4880597; 479919, 4880577; 479923, 4880559; 479927, 4880535; 479925, 4880523; 479939, 4880500; 479941, 4880484; 479939, 4880468; 479945, 4880456; 479947, 4880442; 479943, 4880426; 479949, 4880410; 479965, 4880400; 479975, 4880396; 479981, 4880373; 479987, 4880361; 479999, 4880357; 479999, 4880343; 480005, 4880319; 480005, 4880305; 480016, 4880283; 480034, 4880263; 480048, 4880265; 480054, 4880273; 480068, 4880265;

480088, 4880271; 480098, 4880291; 480094, 4880305; 480100, 4880315;

480118, 4880321; 480118, 4880339; 480124, 4880359; 480134, 4880388; 480141, 4880400; 480149, 4880412; 480163, 4880418; 480173, 4880428; 480177, 4880432; 480189, 4880432; 480221, 4880422; 480245, 4880424; 480261, 4880422; 480280, 4880422; 480322, 4880426; 480344, 4880432; 480378, 4880438; 480391, 4880442; 480417, 4880444; 480411, 4880428; 480405, 4880398; 480401, 4880371; 480401, 4880353; 480389, 4880333; 480384, 4880311; 480374, 4880265; 480366, 4880238; 480364, 4880208; 480362, 4880184; 480358, 4880156; 480354, 4880113; 480336, 4880109; 480300, 4880109; 480259, 4880113; 480179, 4880115; 480116, 4880115; 480076, 4880115; 480044, 4880117; 480044, 4880142; 480044, 4880166; 480042, 4880194; 480034, 4880192; 480020, 4880196; 480010, 4880198; 479997, 4880190; 480001, 4880168; 480001, 4880154; 479983, 4880156; 479969, 4880158; 479957, 4880142; 479971, 4880133; 479983, 4880117; 479977, 4880109; 479989, 4880085; 479993, 4880067; 479987, 4879964; 479602, 4879960; 479606, 4879744; 479592, 4879738; 479586, 4879724; 479584, 4879525; 479544, 4879525; 479500, 4879523; 479304, 4879519; 479272, 4879527; 479243, 4879535; 479235, 4879557; 479245, 4879589; 479256, 4879623; 479268, 4879654; 479288, 4879680; 479298, 4879694; 479298, 4879732; 479278, 4879744; 479233, 4879746; 479215, 4879750; 479195, 4879753; 479193, 4879761; 479195, 4879779; 479201, 4879811; 479199, 4879831; 479199, 4879859; 479217, 4879861; 479245, 4879835; 479270, 4879829; 479300, 4879867; 479308, 4879902; 479298, 4879930; 479284, 4879974; 479290, 4880025; 479300, 4880065; 479320, 4880095; 479328, 4880119; 479350, 4880134; 479360, 4880148; 479370, 4880180; 479377, 4880210; 479385, 4880252; 479385, 4880303; 479383, 4880341; 479395, 4880367; 479397, 4880392; 479403, 4880406; 479415, 4880432; 479415, 4880450; 479411, 4880468; 479423, 4880474; 479439, 4880484; 479447, 4880494; 479459, 4880498; 479477, 4880496; 479495, 4880502; 479493, 4880519; 479485, 4880541; 479491, 4880551; 479500, 4880557; 479518, 4880571; 479520, 4880567; 479526, 4880551; 479542, 4880527; 479552, 4880537; 479576, 4880547; 479582, 4880539; 479600, 4880527; 479620, 4880517; 479637, 4880517; 479665, 4880529; 479683, 4880543; 479665, 4880587; 479635, 4880623; 479588, 4880672; 479540, 4880744; 479524, 4880785; 479516, 4880801; 479510, 4880811; 479506, 4880829; 479518, 4880831; 479546, 4880825; 479584, 4880813; 479610, 4880803; 479639, 4880807; 479679, 4880823; 479713, 4880857; 479721, 4880879; 479739, 4880910; 479753, 4880942; 479766, 4880956; 479782, 4880970; 479800, 4880986; 479822, 4881000; 479840, 4881025; 479880, 4881069; 479899, 4881093; 479915, 4881115; 479935, 4881133; 479951, 4881137; 479979, 4881139; 480012, 4881133; 480048, 4881150; 480062, 4881170; 480110, 4881234; 480108, 4881248; 480098, 4881272; 480084, 4881289; 480058, 4881325; 480040, 4881351; 480020, 4881375; 479987, 4881406; 479983, 4881410; 479953, 4881450; 479941, 4881484; 479937, 4881518; 479937, 4881551; 479947, 4881567; 479953, 4881589; 479963, 4881607; 479981, 4881623; 480012, 4881647; 480042, 4881666; 480052, 4881666; 480082, 4881662; 480102, 4881658; 480134, 4881664; 480155, 4881678; 480161, 4881700; 480163, 4881722; 480163, 4881748; 480159, 4881776; 480159, 4881793; 480149, 4881807; 480145, 4881817; 480135, 4881825; 480122, 4881829; 480110, 4881825; 480068, 4881829; 480046, 4881825; 480028, 4881825; 479989, 4881845; 479965, 4881863; 479941, 4881889; 479923, 4881924; 479921, 4881954; 479921, 4881978;

479929, 4882000; 479947, 4882020; 479959, 4882028; 479981, 4882043; 479995, 4882057; 480014, 4882067; 480003, 4882089; 479997, 4882111; 479997, 4882135; 479993, 4882155; 479981, 4882180; 479980, 4882187; 479981, 4882188; 479978, 4882213; 479980, 4882240; 479978, 4882272; 479976, 4882288; 479968, 4882318; 479954, 4882344; 479944, 4882371; 479942, 4882401; 479946, 4882431; 479954, 4882449; 479962, 4882455; 479980, 4882461; 479990, 4882465; 479999, 4882463; 480017, 4882459; 480037, 4882473; 480047, 4882494; 480063, 4882502; 480077, 4882508; 480109, 4882512; 480134, 4882518; 480158, 4882532; 480171, 4882532; 480171, 4882524; 480172, 4882501; 480173, 4882467.

(iii) Unit 10C (FBB–10C): 481378, 4880648; 481378, 4880649; 481379, 4880651; 481380, 4880651; 481386, 4880656; 481391, 4880657; 481396, 4880658; 481398, 4880658; 481400, 4880657; 481401, 4880674; 481426, 4880675; 481437, 4880674; 481437, 4880675; 481438, 4880675; 481438, 4880675; 481438, 4880675; 481443, 4880679; 481448, 4880686; 481454, 4880692; 481461, 4880697; 481466, 4880702; 481473, 4880709; 481478, 4880715; 481481, 4880724; 481484, 4880732; 481485, 4880737; 481486, 4880744; 481487, 4880751; 481488, 4880756; 481488, 4880762; 481488, 4880768; 481485, 4880774; 481482, 4880779; 481480, 4880786; 481478, 4880790; 481477, 4880795; 481475, 4880803; 481474, 4880808; 481473, 4880813; 481473, 4880820; 481467, 4880823; 481460, 4880829; 481455, 4880836; 481454, 4880844; 481455, 4880854; 481460, 4880864; 481464, 4880872; 481468, 4880877; 481472, 4880882; 481476, 4880886; 481481, 4880892; 481489, 4880897; 481495, 4880902; 481502, 4880908; 481511, 4880912; 481515, 4880917; 481521, 4880920; 481529, 4880923; 481535, 4880925; 481542, 4880927; 481545, 4880928; 481567, 4880927; 481580, 4880925; 481590, 4880922; 481597, 4880918; 481602, 4880914; 481602, 4880914; 481602, 4880913; 481609, 4880913; 481612, 4880913; 481615, 4880820; 481611, 4880820; 481611, 4880816; 481612, 4880815; 481616, 4880815; 481616, 4880806; 481617, 4880802; 481620, 4880797; 481622, 4880794; 481622, 4880793; 481623, 4880790; 481623, 4880789; 481624, 4880788; 481624, 4880786; 481816, 4880785; 481814, 4880923; 481900, 4880926; 481912, 4880916; 481942, 4880882; 481988, 4880820; 481991, 4880727; 481800, 4880618; 481741, 4880607; 481669, 4880604; 481667, 4880569; 481686, 4880525; 481718, 4880494; 481780, 4880511; 481849, 4880560; 481913, 4880614; 481964, 4880648; 482025, 4880685; 482062, 4880698; 482079, 4880687; 482089, 4880665; 482099, 4880579; 482082, 4880547; 481998, 4880506; 481925, 4880469; 481809, 4880408; 481760, 4880370; 481645, 4880354; 481620, 4880380; 481618, 4880513; 481600, 4880528; 481599, 4880529; 481598, 4880529; 481594, 4880529; 481589, 4880526; 481587, 4880525; 481577, 4880525; 481572, 4880525; 481568, 4880525; 481563, 4880525; 481559, 4880525; 481557, 4880525; 481553, 4880523; 481551, 4880523; 481541, 4880523; 481540, 4880523; 481540, 4880523; 481532, 4880524; 481525, 4880523; 481509, 4880519; 481496, 4880519; 481494, 4880520; 481483, 4880523; 481470, 4880525; 481470, 4880525; 481470, 4880525; 481469, 4880525; 481454, 4880526; 481448, 4880527; 481431, 4880531; 481409, 4880530; 481409, 4880530; 481405, 4880530; 481420, 4880517; 481445, 4880474; 481453, 4880443; 481451, 4880421; 481452, 4880420; 481444, 4880418; 481428, 4880427; 481400, 4880494; 481379, 4880554; 481368, 4880626; 481373, 4880640; 481374, 4880634; 481375, 4880644; 481377, 4880648; 481378, 4880648.

(iv) Unit 10D (FBB–10D): 482330, 4880170; 482330, 4880242; 482338, 4880299; 482384, 4880330; 482415, 4880349; 482472, 4880382; 482531, 4880408; 482566, 4880419; 482601, 4880426; 482638, 4880434; 482700, 4880436; 482751, 4880435; 482832, 4880421; 482837, 4880436; 482842, 4880441; 482846, 4880456; 482865, 4880463; 482890, 4880456; 482946, 4880435; 482951, 4880427; 482973, 4880408; 483000, 4880395; 483014, 4880387; 483040, 4880372; 483075, 4880346; 483131, 4880295; 483137, 4880272; 483125, 4880251; 483125, 4880250; 483083, 4880204; 483082, 4880205; 483069, 4880202; 483048, 4880205; 483015, 4880205; 482992, 4880209; 482984, 4880207; 482955, 4880210; 482933, 4880217; 482866, 4880211; 482836, 4880163; 482839, 4880141; 482828, 4880125; 482816, 4880120; 482804, 4880120; 482788, 4880127; 482759, 4880130; 482736, 4880121; 482713, 4880119; 482649, 4880141; 482601, 4880164; 482567, 4880154; 482546, 4880160; 482532, 4880142; 482511, 4880124; 482489, 4880130; 482457, 4880119; 482423, 4880123; 482330, 4880170.

(v) Unit 10E (FBB–10E): 483301, 4880015; 483334, 4880057; 483333, 4880306; 483332, 4880510; 483360, 4880508; 483386, 4880503; 483421, 4880492; 483444, 4880480; 483486, 4880443; 483541, 4880386; 483561, 4880361; 483631, 4880258; 483671, 4880200; 483683, 4880171; 483736, 4880004; 483767, 4879924; 483848, 4879754; 483860, 4879739; 483868, 4879724; 483868, 4879708; 483853, 4879707; 483824, 4879707; 483765, 4879712; 483763, 4879718; 483751, 4879724; 483751, 4879729; 483748, 4879746; 483706, 4879749; 483693, 4879751; 483681, 4879754; 483652, 4879767; 483614, 4879787; 483545, 4879797; 483306, 4879918; 483301, 4880015.

(vi) Unit 11A (FBB–11A): 482634, 4879216; 482560, 4879196; 482528, 4879254; 482470, 4879358; 482492, 4879432; 482573, 4879516; 482592, 4879600; 482486, 4879609; 482475, 4879701; 482527, 4879700; 482613, 4879696; 482655, 4879694; 482634, 4879216.

(vii) Unit 11B (FBB–11B): 482130, 4878873; 482101, 4878734; 481898, 4878780; 481827, 4878721; 481792, 4878680; 481750, 4878676; 481734, 4878689; 481740, 4878776; 481743, 4878847; 481771, 4878922; 481791, 4878918; 481901, 4878886; 482130, 4878873.

(viii) Unit 11C (FBB–11C): 482637, 4878489; 482654, 4878466; 482492, 4878476; 482492, 4878521; 482544, 4878709; 482595, 4878851; 482687, 4878901; 482911, 4878899; 482883, 4878825; 482792, 4878741; 482744, 4878644; 482654, 4878599; 482625, 4878583; 482637, 4878489.

(ix) Unit 11D (FBB–11D): 483917, 4879166; 483911, 4879133; 483895, 4879125; 483841, 4879126; 483792, 4879136; 483800, 4879102; 483835, 4879061; 483920, 4879021; 483949, 4879004; 483975, 4878976; 483992, 4878953; 484027, 4878883; 484048, 4878870; 484059, 4878815; 484017, 4878833; 483914, 4878874;

483812, 4878917; 483725, 4878961; 483698, 4878999; 483674, 4879071; 483668, 4879377; 483703, 4879390; 483754, 4879404; 483789, 4879412; 483849, 4879401; 483906, 4879358; 483920, 4879301; 483923, 4879247; 483917, 4879166.

(x) Unit 11E (FBB–11E): 484274, 4879053; 484439, 4878986; 484226, 4878988; 484195, 4878996; 484183, 4879004; 484183, 4879189; 484193, 4879197; 484201, 4879199; 484220, 4879148; 484239, 4879099; 484253, 4879070; 484274, 4879053.

(xi) Unit 11F (FBB–11F): 484856, 4878596; 484906, 4878565; 484909, 4878412; 485192, 4878416; 485247, 4878417; 485269, 4878317; 485038, 4878264; 484819, 4878269; 484774, 4878240; 484777, 4878237; 484743, 4878234; 484735, 4878256; 484736, 4878340; 484731, 4878360; 484711, 4878440; 484690, 4878493; 484646, 4878531; 484613, 4878561; 484639, 4878590; 484639, 4878590; 484856, 4878596.

(xii) Unit 11G (FBB–11G): 484890, 4877956; 484890, 4877986; 484893, 4878018; 484903, 4878058; 484911, 4878082; 484908, 4878084; 484943, 4878095; 484981, 4878028; 484993, 4877966; 484998, 4877917; 485005, 4877890; 485003, 4877867; 484981, 4877858; 484981, 4877861; 484960, 4877869; 484936, 4877878; 484916, 4877898; 484897, 4877925; 484890, 4877956.

(xiii) Unit 11H (FBB–11H): 485260, 4877580; 485260, 4877580; 485263, 4878059; 485381, 4878067; 485486, 4878059; 485530, 4878059; 485578, 4878058; 485595, 4878021; 485594, 4877901; 485597, 4877851; 485598, 4877813; 485589, 4877780; 485587, 4877759; 485587, 4877759; 485586, 4877757; 485592, 4877706; 485592, 4877705; 485589, 4877570; 485589, 4877512; 485616, 4877499; 485716, 4877494; 485714, 4877466; 485719, 4877374; 485716, 4877332; 485700, 4877320; 485605, 4877329; 485547, 4877340; 485479, 4877364; 485432, 4877390; 485340, 4877458; 485304, 4877484; 485260, 4877580.

(xiv) Unit 11I (FBB–11I): 486042, 4877818; 486064, 4877815; 486085, 4877816; 486097, 4877812; 486099, 4877812; 486110, 4877794; 486111, 4877786; 486113, 4877755; 486112, 4877751; 486111, 4877741; 486112, 4877740; 486112, 4877736; 486112, 4877735; 486110, 4877734; 486110, 4877734; 486107, 4877713; 486106, 4877708; 486106, 4877708; 486106, 4877708; 486067, 4877628; 486041, 4877605; 486036, 4877586; 486033, 4877528; 486241, 4877142; 486263, 4877100; 486261, 4876700; 486057, 4876700; 485991, 4876758; 485978, 4876930; 485986, 4877216; 485986, 4877222; 485981, 4877497; 485981, 4877647; 485977, 4877652; 485975, 4877692; 485976, 4877692; 485976, 4877703; 485977, 4877703; 485976, 4877703; 485977, 4877712; 485983, 4877780; 485984, 4877781; 485987, 4877791; 485988, 4877795; 485996, 4877809; 485999, 4877814; 486024, 4877817; 486038, 4877818; 486042, 4877818.

(xv) Unit 12A (FBB–12A): 486197, 4875513; 486200, 4875474; 486201, 4875316; 486185, 4874677; 486042, 4874749; 486046, 4875014; 485875, 4875023; 485874, 4875012; 485698, 4875023; 485695, 4875035; 485450, 4875035; 485608, 4875144; 485702, 4875208; 485712, 4875178; 485862, 4875211; 485889, 4875218;

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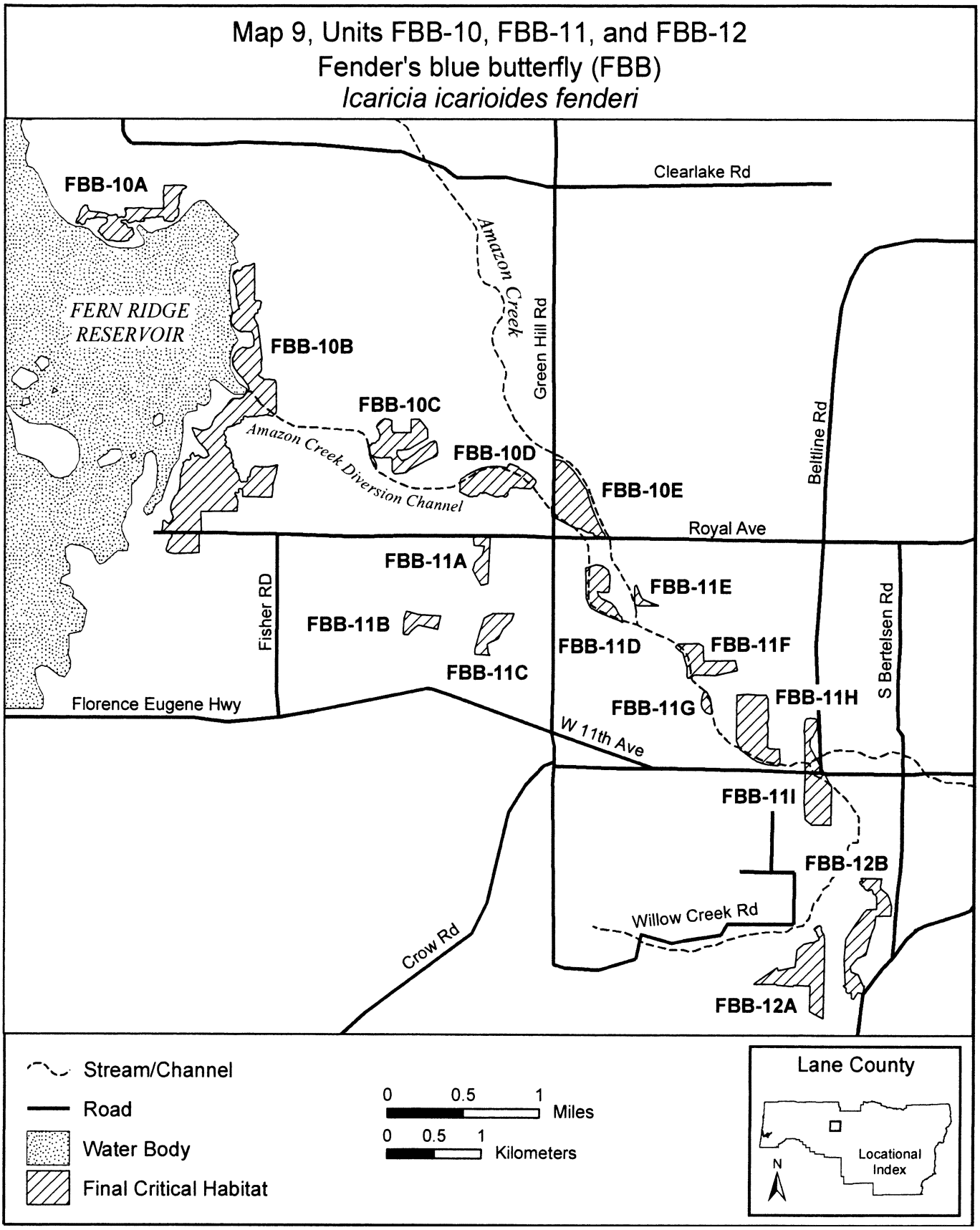
(xvi) Unit 12B (FBB–12B): 486793, 4876121; 486790, 4876107; 486783, 4876064; 486783, 4876051; 486790, 4876034; 486805, 4876021; 486842, 4875993; 486855, 4875977; 486860, 4875962; 486869, 4875946; 486883, 4875908; 486893, 4875878; 486895, 4875857; 486896, 4875826; 486892, 4875791; 486893, 4875754; 486886, 4875756; 486738, 4875751; 486734, 4875744; 486731, 4875711; 486725, 4875665; 486720, 4875629; 486693, 4875573; 486629, 4875348; 486549, 4875312; 486469, 4875220; 486477, 4875168; 486553, 4875136; 486603, 4875021; 486608, 4875021; 486616, 4875020; 486601, 4874935; 486577, 4874945; 486546, 4874949; 486542, 4874941; 486522, 4874907; 486507,

4874882; 486482, 4874888; 486482, 4874900; 486481, 4874944; 486439, 4874947; 486424, 4874957; 486426, 4874980; 486427, 4875000; 486409, 4875006; 486398, 4875018; 486401, 4875024; 486416, 4875027; 486422, 4875028; 486417, 4875033; 486405, 4875292; 486421, 4875508; 486517, 4875652; 486614, 4875792; 486640, 4875821; 486742, 4875825; 486742, 4875951; 486725, 4875983; 486714, 4875983; 486709, 4875984; 486702, 4875993; 486694, 4876021; 486685, 4876033; 486684, 4876035; 486680, 4876031; 486676, 4876028; 486672, 4876025; 486660, 4876020; 486657, 4876018; 486652, 4876018; 486639, 4876025; 486629, 4876029; 486620, 4876034; 486614, 4876044; 486613, 4876052; 486610, 4876058; 486605, 4876068; 486594, 4876067; 486589, 4876066; 486585, 4876068; 486581, 4876078; 486576, 4876086; 486568, 4876093; 486565, 4876102; 486563, 4876110; 486565, 4876115; 486573, 4876118; 486577, 4876118; 486583, 4876115; 486588, 4876113; 486592, 4876119; 486590, 4876128; 486585, 4876137; 486580, 4876144; 486579, 4876147; 486795, 4876145; 486793, 4876121.

(xvii) Note: Map 9 (Units 10, 11, and 12 for Fender's blue butterfly (FBB–10, FBB–11, and FBB–12)) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(14) Unit 13 for Fender's blue butterfly, Lane County, Oregon.

(i) Unit 13 (FBB–13) exterior unit perimeter: 500237, 4885879; 500247, 4885878; 500251, 4885881; 500259, 4885886; 500266, 4885881; 500274, 4885878; 500281, 4885875; 500294, 4885870; 500305, 4885867; 500309, 4885860; 500312, 4885856; 500326, 4885855; 500374, 4885871; 500388, 4885861; 500407, 4885873; 500445, 4885876; 500494, 4885861; 500516, 4885835; 500529, 4885775; 500516, 4885744; 500461, 4885670; 500397, 4885621; 500340, 4885608; 500322, 4885619; 500317, 4885610; 500306, 4885597; 500302, 4885585; 500297, 4885572; 500297, 4885553; 500301, 4885537; 500309, 4885525; 500306, 4885510; 500301, 4885500; 500291, 4885484; 500282, 4885466; 500266, 4885451; 500242, 4885409; 500227, 4885390; 500207, 4885373; 500198, 4885360; 500187, 4885333; 500176, 4885307; 500174, 4885290; 500176, 4885279; 500179, 4885270; 500184, 4885259; 500181, 4885253; 500171, 4885244; 500164, 4885234; 500162, 4885226; 500162, 4885217; 500163, 4885206; 500168, 4885202; 500171, 4885197; 500161, 4885192; 500160, 4885180; 500160, 4885169; 500164, 4885163; 500178, 4885155; 500184, 4885150; 500190, 4885148; 500193, 4885151; 500199, 4885162; 500206, 4885173; 500217, 4885177; 500212, 4885166; 500206, 4885154; 500201, 4885146; 500209, 4885142; 500215, 4885144; 500229, 4885144; 500239, 4885146; 500251, 4885152; 500259, 4885155; 500279, 4885163; 500292, 4885172; 500302, 4885178; 500314, 4885187; 500324, 4885196; 500329, 4885199; 500344, 4885203; 500352, 4885207; 500361, 4885212; 500371, 4885215; 500400, 4885229; 500421, 4885235; 500427, 4885243; 500433, 4885255; 500437, 4885268; 500442, 4885275; 500444, 4885282; 500438, 4885286; 500423, 4885294; 500426, 4885302; 500437, 4885307; 500442, 4885305; 500454, 4885296; 500462, 4885297; 500459, 4885311; 500452, 4885318; 500449, 4885334; 500453, 4885342; 500462, 4885352; 500467, 4885363; 500477, 4885365; 500477, 4885376; 500485, 4885383; 500494, 4885390; 500505, 4885393; 500521, 4885400; 500529, 4885408; 500534, 4885416; 500542, 4885422; 500554, 4885423; 500562, 4885416; 500568, 4885412; 500579, 4885407; 500592, 4885409; 500597, 4885417; 500596, 4885428; 500602, 4885436; 500609, 4885439; 500622, 4885444; 500634, 4885443; 500654, 4885440; 500673, 4885439; 500687, 4885436; 500694, 4885427; 500687, 4885407; 500670, 4885388; 500647, 4885390; 500636, 4885394; 500621, 4885391; 500602, 4885373; 500581, 4885365; 500549, 4885361; 500531, 4885360; 500527, 4885349; 500530, 4885339; 500519, 4885340; 500508, 4885335; 500504, 4885327; 500497, 4885330; 500491, 4885326; 500494, 4885317; 500489, 4885309; 500489, 4885296; 500502, 4885288; 500514, 4885289; 500537, 4885295; 500546, 4885294; 500558, 4885292; 500561, 4885282; 500554, 4885275; 500544, 4885277; 500529, 4885277; 500519, 4885272; 500513, 4885265; 500501, 4885271; 500485, 4885274; 500476, 4885264; 500468, 4885243; 500460, 4885232; 500457, 4885210; 500452, 4885199; 500457, 4885188; 500479, 4885175; 500486, 4885169; 500499, 4885169; 500506, 4885155; 500517, 4885152; 500513, 4885142; 500508, 4885129; 500512, 4885117; 500511, 4885095; 500505, 4885083; 500514, 4885068; 500512, 4885060; 500511, 4885048; 500513, 4885042; 500520, 4885030; 500524, 4885026; 500541, 4885018; 500541, 4885011; 500552, 4884997; 500547, 4884989; 500532, 4884994; 500523, 4884995; 500515, 4884995; 500507, 4884986; 500501, 4884974; 500500, 4884957; 500498, 4884940; 500500, 4884924; 500506, 4884903; 500512, 4884889; 500526, 4884882; 500538, 4884872; 500560, 4884867; 500558, 4884857;

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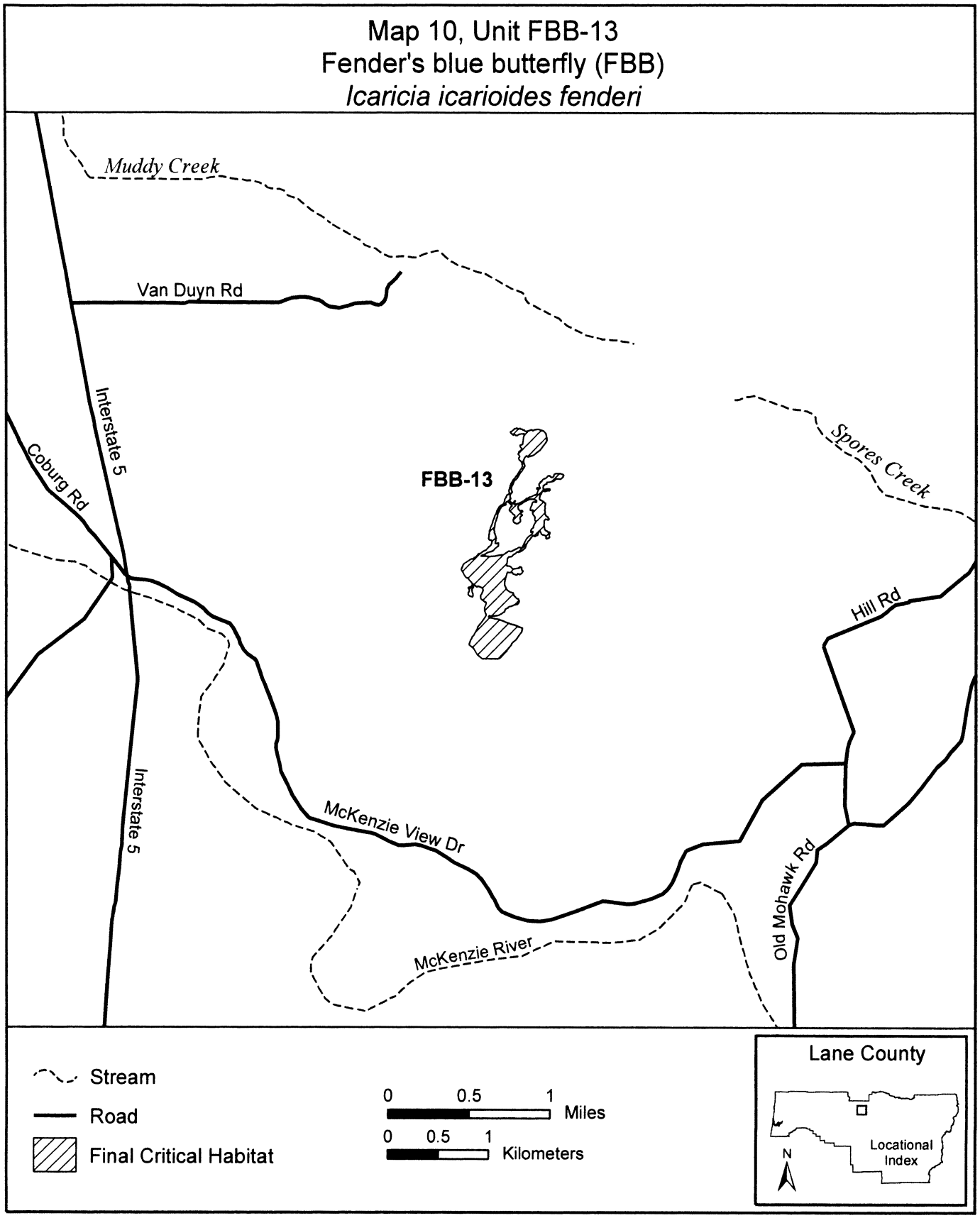
(ii) Unit 13 (FBB–13) interior unit perimeter 500014, 4884757; 500024, 4884754; 500039, 4884757; 500047, 4884762; 500047, 4884748; 500048, 4884731; 500033, 4884719; 500019, 4884709; 500009, 4884696; 499994, 4884686; 499975, 4884679; 499963, 4884672; 499939, 4884665; 499927, 4884656; 499908, 4884648; 499899, 4884644; 499883, 4884641; 499869, 4884634; 499896, 4884633; 499920, 4884633; 499959, 4884630; 500010, 4884633; 500077, 4884643; 500098, 4884643; 500132, 4884671; 500152, 4884680; 500169, 4884677; 500211, 4884696; 500232, 4884707; 500254, 4884720; 500271, 4884714; 500280, 4884715; 500316, 4884780; 500328, 4884808; 500349, 4884827; 500374, 4884844; 500382, 4884855; 500387, 4884875; 500373, 4884873; 500367, 4884862; 500367, 4884883; 500374, 4884899; 500389, 4884907; 500401, 4884915; 500393, 4884922; 500399, 4884934; 500404, 4884947; 500414, 4884955; 500421, 4884967; 500414, 4884984; 500407, 4884992; 500412, 4885011; 500406, 4885026; 500392, 4885038; 500386, 4885045; 500381, 4885060; 500391, 4885076; 500386, 4885085; 500372, 4885080; 500364, 4885083; 500362, 4885099; 500372, 4885114; 500377, 4885133; 500385, 4885158; 500391, 4885166; 500404, 4885165; 500424, 4885161; 500427, 4885174; 500422, 4885182; 500387, 4885191; 500364, 4885192; 500348, 4885190; 500333, 4885182; 500317, 4885172; 500297, 4885161; 500275, 4885150; 500261, 4885142; 500246, 4885127; 500242, 4885106; 500246, 4885090; 500260, 4885076; 500272, 4885079; 500283, 4885078; 500283, 4885068; 500272, 4885060; 500268, 4885047; 500277, 4885039; 500286, 4885038; 500275, 4885024; 500260, 4885012; 500260, 4885001; 500265, 4884987; 500264, 4884970; 500252, 4884959; 500242, 4884954; 500226, 4884951; 500208, 4884958; 500198, 4884965; 500191, 4884981; 500194, 4884996; 500202, 4885011; 500212, 4885020; 500209, 4885034; 500193, 4885043; 500186, 4885049; 500179, 4885057; 500161, 4885069; 500154, 4885086; 500166, 4885113; 500182, 4885123; 500171, 4885137; 500162, 4885147; 500149, 4885157; 500137, 4885168; 500128, 4885163; 500119, 4885147; 500121, 4885136; 500101, 4885127; 500085, 4885118; 500077, 4885110; 500070, 4885099; 500062, 4885087; 500055, 4885072; 500041, 4885045; 500034, 4885017; 500029, 4884996; 500025, 4884978; 500016, 4884959; 500011, 4884937; 500011, 4884921; 500004, 4884891; 500006, 4884875; 500006, 4884860; 500014, 4884840; 500020, 4884823; 500025, 4884806; 500021, 4884789; 500024, 4884780; 500014, 4884772; 500014, 4884757.

(iii) Note: Map 10 (Unit 13 for Fender's blue butterfly (FBB–13)) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

* * * * *

■ 5. In § 17.96(a), add entries for *Erigeron decumbens* var. *decumbens* (Willamette daisy) and *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine) in alphabetical order by family under Asteraceae and Fabaceae, respectively, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Erigeron decumbens* var. *decumbens* (Willamette daisy).

(1) Critical habitat units are depicted for Benton, Lane, Linn, Marion, and Polk Counties, Oregon, on the maps below.

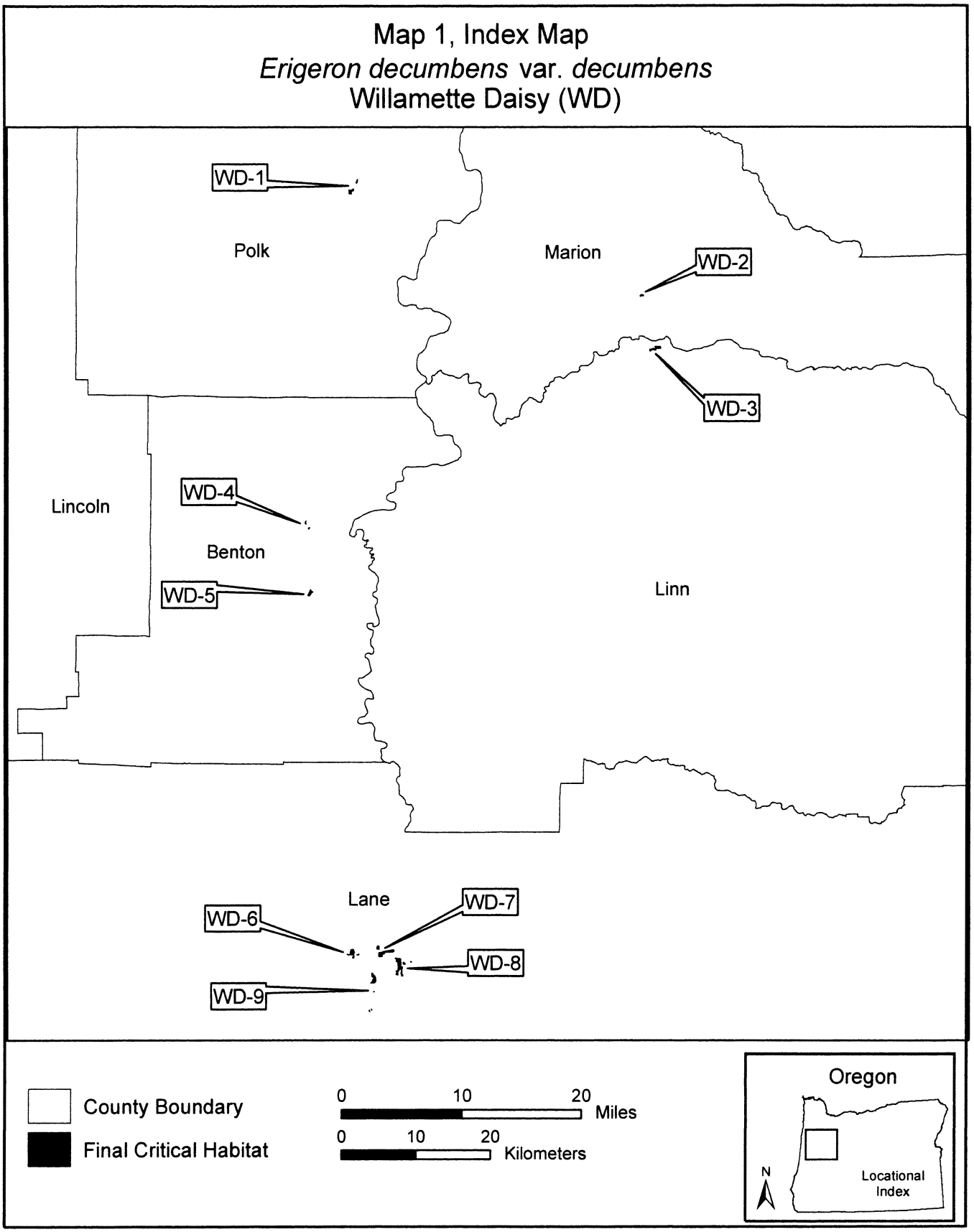
(2) The primary constituent elements of critical habitat for *Erigeron decumbens* var. *decumbens* are the habitat components that provide:

(i) Early seral upland prairie, wet prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, and spaces to establish seedlings or new vegetative growth; an absence of dense canopy vegetation; and undisturbed subsoils.

(3) Critical habitat does not include man-made structures (such as buildings, aqueducts, airports, roads, and other paved areas, and the land on which such structures are located) existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map units.* Critical habitat units are described below. Data layers defining map units were created using USGS 24,000 scale Digital Ortho Quads captured in 2000. Critical habitat units were then mapped using UTM zone 10, NAD 1983 coordinates.

(5) Note: Map 1 (Index map for *Erigeron decumbens* var. *decumbens*) follows:

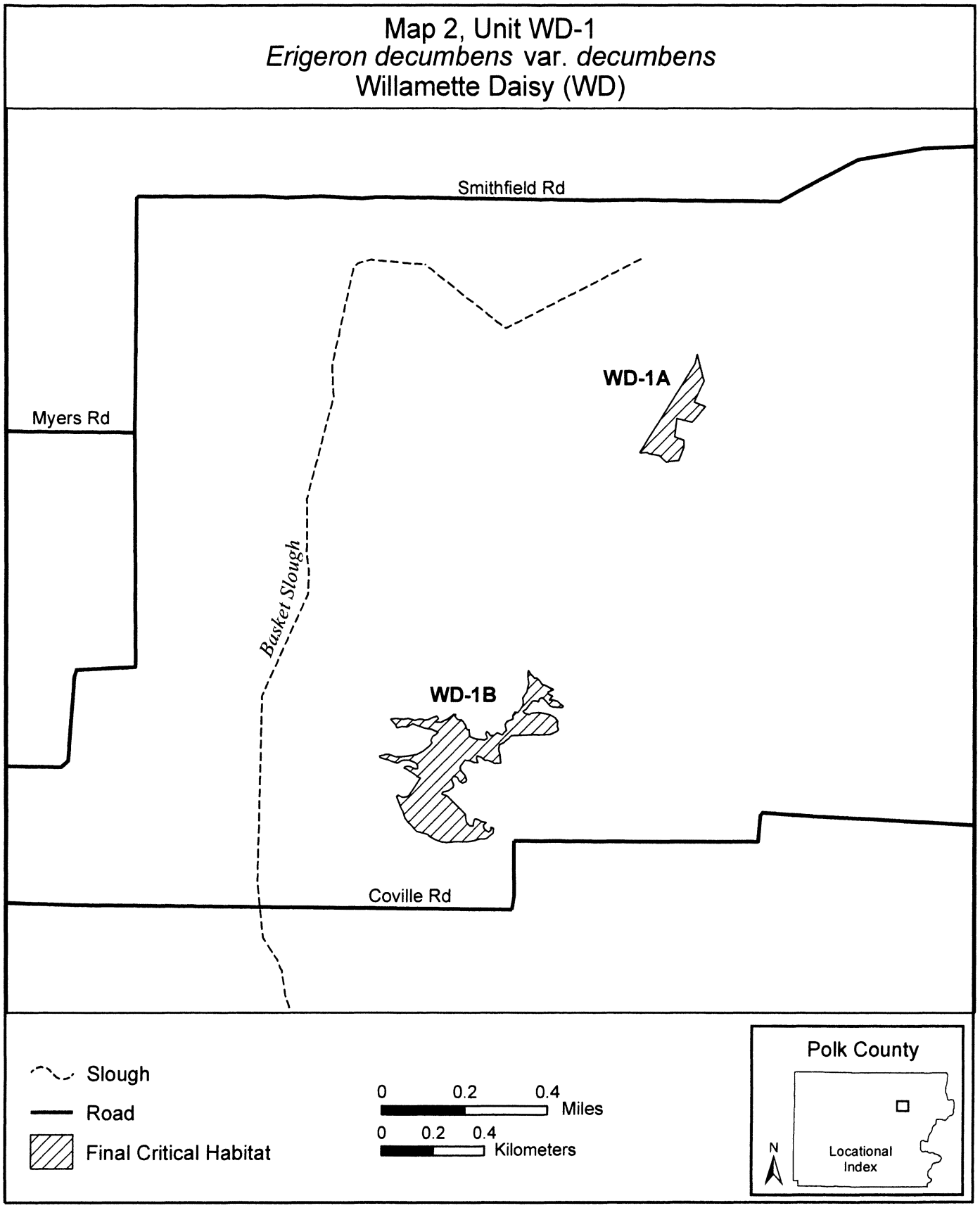

Map 1, Index Map
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
WD-1
Polk
Marion
WD-2
WD-3
Lincoln
WD-4
Benton
WD-5
Linn
Lane
WD-6
WD-7
WD-8
WD-9
County Boundary
Final Critical Habitat
0 10 20 Miles
0 10 20 Kilometers
Oregon
N
Locational Index

(6) Unit 1 for *Erigeron decumbens* var. *decumbens* (WD–1), Polk County, Oregon.

(i) Unit 1A (WD–1A): 480424, 4980390; 480372, 4980330; 480312, 4980343; 480304, 4980273; 480339, 4980261; 480339, 4980235; 480319, 4980183; 480271, 4980178; 480242, 4980204; 480206, 4980208; 480198, 4980215; 480170, 4980213; 480383, 4980550; 480393, 4980586; 480417, 4980484; 480379, 4980405; 480424, 4980390.

(ii) Unit 1B (WD–1B): 479757, 4979367; 479765, 4979358; 479775, 4979358; 479788, 4979347; 479796, 4979335; 479809, 4979329; 479830, 4979318; 479840, 4979313; 479817, 4979304; 479821, 4979295; 479838, 4979287; 479823, 4979273; 479839, 4979273; 479854, 4979268; 479870, 4979256; 479878, 4979250; 479874, 4979244; 479841, 4979247; 479829, 4979250; 479823, 4979256; 479808, 4979274; 479797, 4979282; 479786, 4979280; 479782, 4979267; 479773, 4979270; 479761, 4979270; 479751, 4979259; 479744, 4979249; 479737, 4979239; 479723, 4979230; 479727, 4979224; 479746, 4979218; 479758, 4979224; 479778, 4979226; 479790, 4979226; 479814, 4979222; 479826, 4979216; 479847, 4979205; 479857, 4979192; 479855, 4979172; 479859, 4979160; 479853, 4979153; 479827, 4979142; 479769, 4979141; 479708, 4979138; 479679, 4979136; 479673, 4979131; 479669, 4979125; 479658, 4979117; 479649, 4979110; 479632, 4979104; 479629, 4979085; 479634, 4979063; 479635, 4979041; 479637, 4979031; 479612, 4979030; 479602, 4979037; 479587, 4979043; 479577, 4979041; 479563, 4979053; 479545, 4979061; 479541, 4979049; 479547, 4979034; 479533, 4979034; 479518, 4979042; 479497, 4979043; 479486, 4979029; 479480, 4979021; 479478, 4979011; 479483, 4978999; 479496, 4978986; 479503, 4978968; 479500, 4978960; 479487, 4978955; 479476, 4978961; 479469, 4978975; 479453, 4978983; 479444, 4978970; 479453, 4978947; 479451, 4978937; 479434, 4978927; 479412, 4978921; 479408, 4978912; 479424, 4978908; 479430, 4978904; 479499, 4978836; 479500, 4978819; 479503, 4978804; 479509, 4978799; 479517, 4978791; 479530, 4978791; 479531, 4978803; 479534, 4978817; 479541, 4978817; 479549, 4978815; 479563, 4978808; 479581, 4978804; 479577, 4978801; 479569, 4978794; 479571, 4978782; 479583, 4978771; 479591, 4978767; 479599, 4978775; 479599, 4978786; 479608, 4978782; 479607, 4978764; 479597, 4978755; 479583, 4978744; 479571, 4978740; 479557, 4978741; 479547, 4978740; 479537, 4978736; 479531, 4978734; 479507, 4978732; 479481, 4978731; 479457, 4978731; 479425, 4978728; 479402, 4978732; 479385, 4978738; 479360, 4978751; 479354, 4978759; 479323, 4978769; 479313, 4978770; 479302, 4978778; 479292, 4978792; 479277, 4978804; 479266, 4978822; 479260, 4978834; 479255, 4978851; 479248, 4978865; 479239, 4978887; 479233, 4978904; 479239, 4978910; 479244, 4978907; 479255, 4978901; 479270, 4978903; 479280, 4978907; 479325, 4978974; 479314, 4978978; 479306, 4978985; 479283, 4978999; 479270, 4979009; 479260, 4979012; 479264, 4979017; 479274, 4979021; 479286, 4979017; 479299, 4979011; 479314, 4979010; 479314, 4979022; 479306, 4979031; 479297, 4979037; 479281, 4979043; 479263, 4979043; 479253, 4979041; 479237, 4979033; 479228, 4979034; 479209, 4979040; 479198, 4979044; 479184, 4979048; 479168, 4979053; 479167, 4979059; 479182, 4979062; 479188, 4979066; 479203, 4979065; 479228, 4979056; 479250, 4979056; 479277, 4979059; 479311, 4979065; 479337, 4979078; 479361, 4979097; 479369, 4979110; 479364, 4979119; 479373, 4979134; 479382, 4979140; 479393, 4979149; 479370, 4979161; 479341, 4979166; 479310, 4979176; 479295, 4979184; 479275, 4979171; 479254, 4979172; 479235, 4979167; 479229, 4979180; 479218, 4979190; 479209, 4979200; 479230, 4979204; 479243, 4979201; 479261, 4979200; 479277, 4979204; 479289, 4979200; 479304, 4979195; 479320, 4979200; 479331, 4979200; 479342, 4979195; 479356, 4979199; 479368, 4979205; 479389, 4979212; 479395, 4979203; 479381, 4979190; 479404, 4979188; 479427, 4979200; 479431, 4979203; 479443, 4979210; 479453, 4979218; 479462, 4979218; 479458, 4979211; 479467, 4979200; 479475, 4979198; 479482, 4979198; 479490, 4979191; 479499, 4979179; 479501, 4979169; 479506, 4979161; 479514, 4979160; 479515, 4979151; 479517, 4979134; 479531, 4979128; 479544, 4979124; 479574, 4979121; 479583, 4979125; 479584, 4979130; 479578, 4979144; 479582, 4979153; 479591, 4979146; 479597, 4979136; 479610, 4979137; 479624, 4979148; 479633, 4979143; 479643, 4979140; 479653, 4979151; 479659, 4979156; 479656, 4979168; 479654, 4979180; 479662, 4979192; 479673, 4979195; 479684, 4979201; 479683, 4979213; 479691, 4979228; 479702, 4979226; 479714, 4979238; 479721, 4979251; 479723, 4979260; 479722, 4979270; 479721, 4979281; 479728, 4979291; 479737, 4979301; 479740, 4979320; 479745, 4979336; 479741, 4979358; 479741, 4979377; 479744, 4979386; 479757, 4979367.

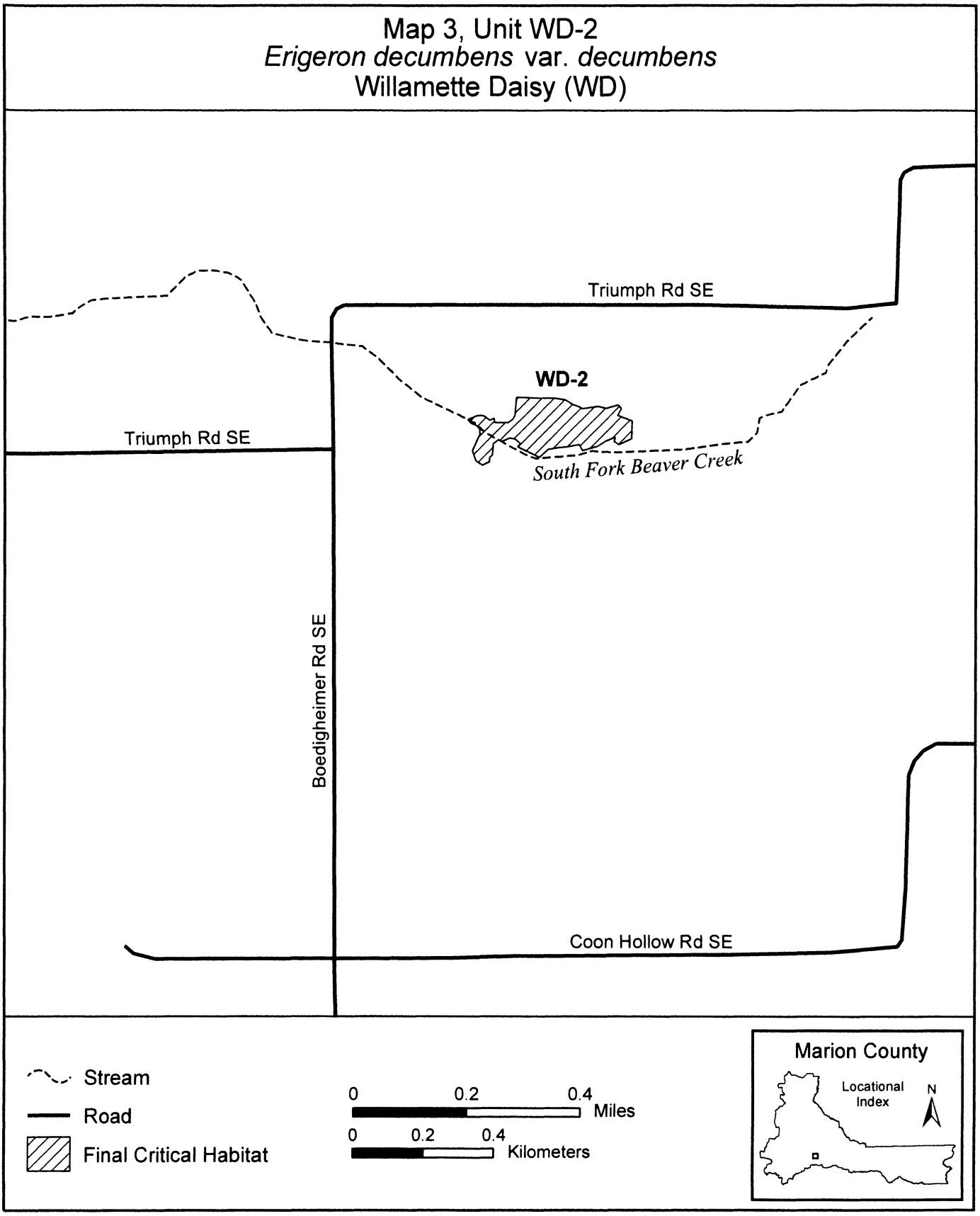
(iii) Note: Map 2 (Unit 1 for *Erigeron decumbens* var. *decumbens* (WD–1)) follows:


Map 2, Unit WD-1
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Smithfield Rd
Myers Rd
WD-1A
Basket Slough
WD-1B
Coville Rd
Slough
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Polk County
N
Locational Index

(7) Unit 2 for *Erigeron decumbens* var. *decumbens,* Marion County, Oregon.

(i) Unit 2 (WD–2): 518371, 4965422; 518439, 4965420; 518478, 4965420; 518509, 4965415; 518530, 4965402; 518545, 4965398; 518558, 4965390; 518602, 4965398; 518627, 4965391; 518660, 4965400; 518669, 4965390; 518659, 4965371; 518700, 4965357; 518698, 4965306; 518661, 4965289; 518650, 4965297; 518651, 4965310; 518626, 4965300; 518601, 4965284; 518558, 4965272; 518549, 4965289; 518516, 4965282; 518489, 4965281; 518460, 4965276; 518435, 4965253; 518373, 4965282; 518382, 4965290; 518368, 4965304; 518352, 4965308; 518331, 4965298; 518319, 4965302; 518305, 4965291; 518303, 4965258; 518295, 4965254; 518295, 4965241; 518274, 4965231; 518256, 4965244; 518247, 4965272; 518269, 4965319; 518267, 4965322; 518267, 4965333; 518256, 4965344; 518243, 4965349; 518233, 4965359; 518260, 4965371; 518278, 4965370; 518297, 4965357; 518308, 4965363; 518310, 4965351; 518348, 4965351; 518361, 4965359; 518366, 4965371; 518371, 4965422.

(ii) Note: Map 3 (Unit 2 for *Erigeron decumbens* var. *decumbens* (WD–2)) follows:


Map 3, Unit WD-2
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Triumph Rd SE
WD-2
Triumph Rd SE
South Fork Beaver Creek
Boedigheimer Rd SE
Coon Hollow Rd SE
Stream
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Marion County
Locational Index
N

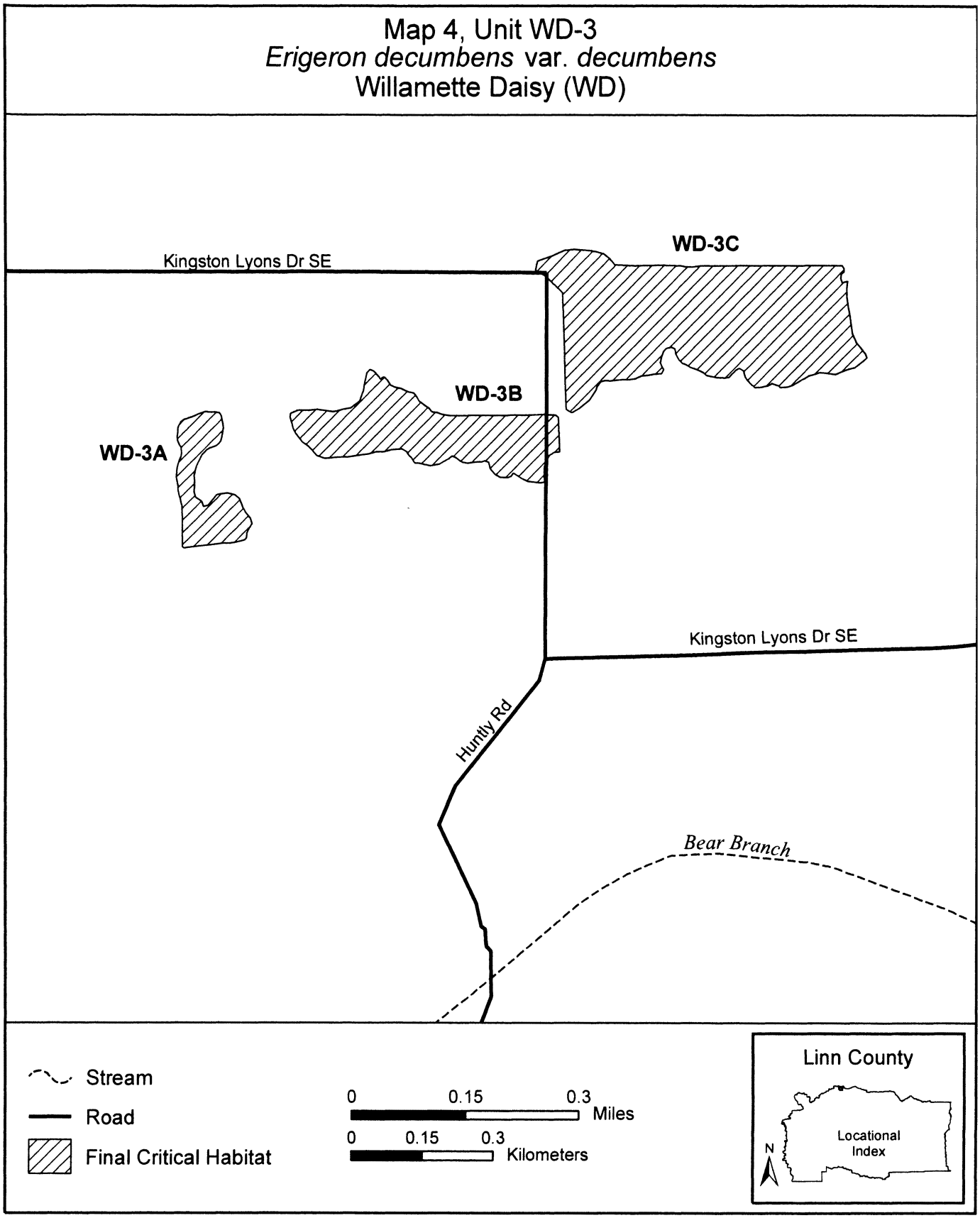
(8) Unit 3 for *Erigeron decumbens* var. *decumbens* (WD–3), Linn County, Oregon.

(i) Unit 3A (WD–3A): 519555, 4958320; 519563, 4958319; 519574, 4958319; 519585, 4958317; 519589, 4958311; 519592, 4958298; 519593, 4958286; 519592, 4958277; 519590, 4958266; 519587, 4958257; 519583, 4958253; 519578, 4958248; 519566, 4958245; 519557, 4958238; 519549, 4958230; 519541, 4958214; 519536, 4958205; 519532, 4958187; 519532, 4958176; 519532, 4958162; 519532, 4958156; 519532, 4958152; 519535, 4958141; 519547, 4958132; 519549, 4958129; 519551, 4958122; 519562, 4958125; 519579, 4958147; 519602, 4958149; 519617, 4958146; 519628, 4958137; 519635, 4958121; 519641, 4958109; 519650, 4958098; 519654, 4958084; 519648, 4958076; 519642, 4958065; 519642, 4958062; 519642, 4958055; 519638, 4958051; 519619, 4958047; 519607, 4958045; 519595, 4958045; 519544, 4958039; 519519, 4958037; 519512, 4958035; 519508, 4958037; 519506, 4958122; 519505, 4958128; 519503, 4958137; 519501, 4958144; 519498, 4958156; 519497, 4958164; 519494, 4958183; 519496, 4958201; 519497, 4958210; 519501, 4958218; 519505, 4958227; 519506, 4958233; 519505, 4958243; 519505, 4958245; 519501, 4958249; 519497, 4958260; 519496, 4958267; 519497, 4958272; 519498, 4958284; 519499, 4958288; 519504, 4958298; 519512, 4958303; 519528, 4958309; 519539, 4958314; 519545, 4958316; 519555, 4958320.

(ii) Unit 3B (WD–3B): 519922, 4958394; 519927, 4958387; 519932, 4958392; 519937, 4958390; 519943, 4958385; 519949, 4958375; 519957, 4958371; 519972, 4958368; 519984, 4958362; 519997, 4958358; 520004, 4958350; 520009, 4958342; 520019, 4958335; 520029, 4958327; 520035, 4958320; 520047, 4958318; 520056, 4958314; 520072, 4958312; 520238, 4958313; 520275, 4958314; 520299, 4958313; 520305, 4958308; 520307, 4958237; 520296, 4958236; 520285, 4958230; 520278, 4958217; 520275, 4958206; 520274, 4958185; 520276, 4958174; 520265, 4958171; 520239, 4958175; 520228, 4958180; 520208, 4958192; 520203, 4958186; 520197, 4958183; 520181, 4958183; 520170, 4958189; 520159, 4958201; 520156, 4958214; 520147, 4958218; 520141, 4958215; 520133, 4958215; 520124, 4958214; 520113, 4958213; 520100, 4958214; 520087, 4958224; 520078, 4958227; 520072, 4958223; 520062, 4958217; 520052, 4958211; 520032, 4958207; 520008, 4958213; 520000, 4958213; 519993, 4958224; 519988, 4958227; 519982, 4958237; 519972, 4958243; 519951, 4958240; 519935, 4958237; 519919, 4958237; 519903, 4958232; 519882, 4958230; 519857, 4958225; 519837, 4958225; 519809, 4958223; 519791, 4958229; 519783, 4958238; 519773, 4958248; 519762, 4958256; 519747, 4958275; 519741, 4958287; 519735, 4958308; 519737, 4958317; 519751, 4958323; 519775, 4958323; 519793, 4958324; 519827, 4958320; 519847, 4958324; 519864, 4958327; 519883, 4958342; 519889, 4958360; 519891, 4958367; 519893, 4958376; 519896, 4958389; 519898, 4958401; 519904, 4958407; 519913, 4958405; 519922, 4958394.

(iii) Unit 3C (WD–3C): 520426, 4958626; 520468, 4958624; 520525, 4958625; 520563, 4958624; 520576, 4958621; 520591, 4958621; 520607, 4958624; 520896, 4958625; 520906, 4958625; 520909, 4958619; 520909, 4958611; 520905, 4958607; 520902, 4958598; 520906, 4958589; 520918, 4958593; 520915, 4958581; 520915, 4958560; 520920, 4958529; 520922, 4958512; 520927, 4958483; 520936, 4958464; 520944, 4958455; 520953, 4958443; 520957, 4958433; 520949, 4958426; 520932, 4958413; 520912, 4958407; 520891, 4958399; 520870, 4958401; 520858, 4958402; 520847, 4958399; 520836, 4958396; 520822, 4958389; 520811, 4958381; 520801, 4958376; 520789, 4958373; 520775, 4958371; 520771, 4958375; 520757, 4958380; 520749, 4958375; 520736, 4958373; 520721, 4958371; 520713, 4958377; 520705, 4958387; 520700, 4958395; 520697, 4958406; 520688, 4958411; 520681, 4958407; 520672, 4958400; 520666, 4958393; 520658, 4958390; 520641, 4958392; 520619, 4958396; 520613, 4958401; 520605, 4958406; 520591, 4958411; 520584, 4958413; 520574, 4958419; 520568, 4958421; 520560, 4958429; 520553, 4958442; 520552, 4958451; 520545, 4958455; 520533, 4958452; 520527, 4958445; 520524, 4958436; 520521, 4958423; 520526, 4958413; 520528, 4958408; 520524, 4958400; 520509, 4958399; 520494, 4958396; 520482, 4958395; 520468, 4958389; 520455, 4958387; 520441, 4958387; 520415, 4958385; 520405, 4958386; 520395, 4958383; 520387, 4958373; 520384, 4958364; 520371, 4958344; 520350, 4958327; 520333, 4958318; 520321, 4958324; 520320, 4958331; 520319, 4958402; 520318, 4958432; 520318, 4958451; 520314, 4958568; 520279, 4958601; 520256, 4958614; 520260, 4958633; 520294, 4958645; 520319, 4958656; 520339, 4958657; 520375, 4958655; 520402, 4958649; 520415, 4958638; 520426, 4958626.

(iv) Note: Map 4 (Unit 3 for *Erigeron decumbens* var. *decumbens* (WD–3)) follows:

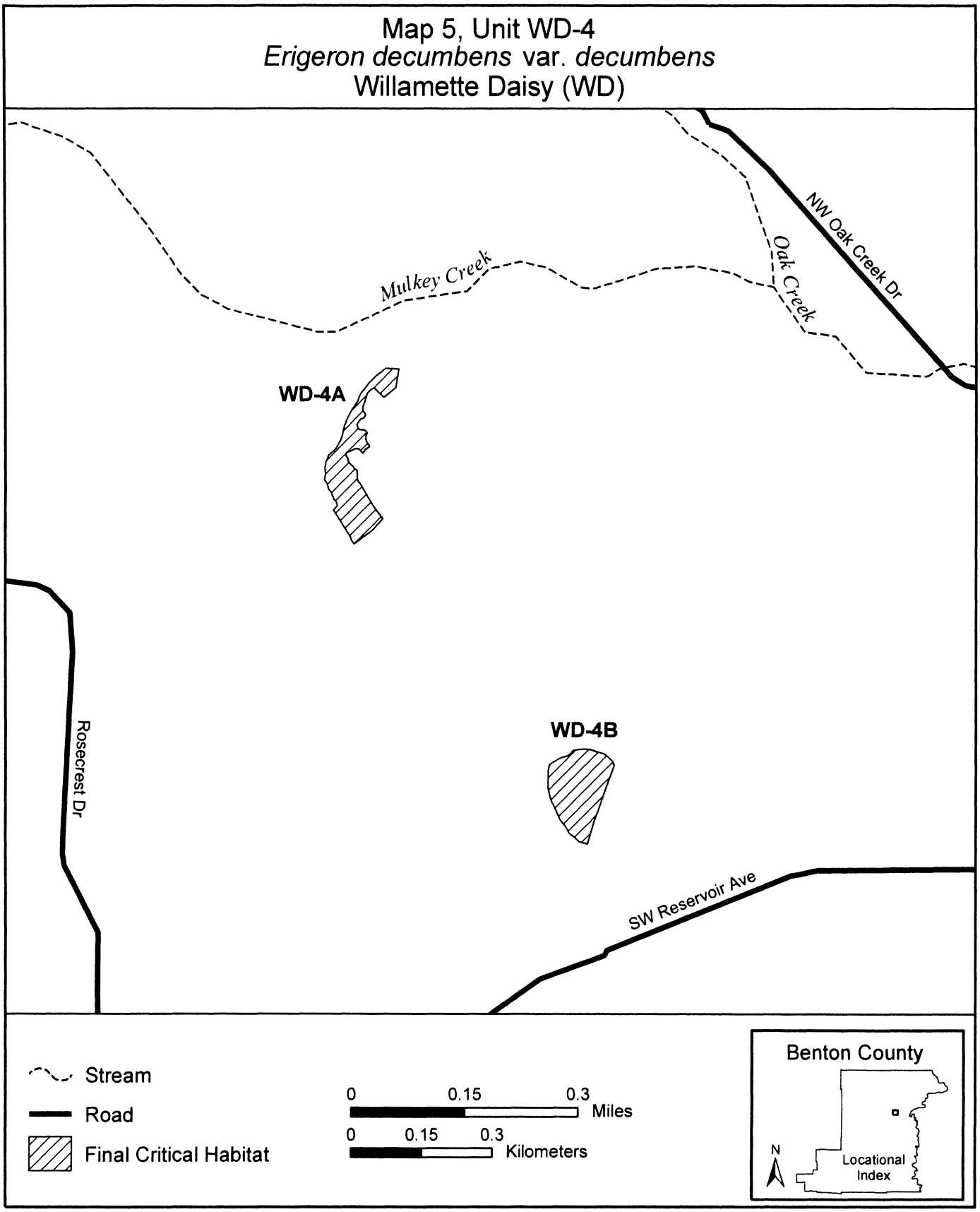

Map 4, Unit WD-3
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Kingston Lyons Dr SE
WD-3C
WD-3B
WD-3A
Kingston Lyons Dr SE
Huntly Rd
Bear Branch
Stream
Road
Final Critical Habitat
0
0.15
0.3
Miles
0
0.15
0.3
Kilometers
Linn County
Locational Index
N

(9) Unit 4 for *Erigeron decumbens* var. *decumbens* (WD–4), Benton County, Oregon.

(i) Unit 4A (WD–4A): 473431, 4935402; 473406, 4935381; 473384, 4935401; 473380, 4935398; 473374, 4935394; 473370, 4935388; 473368, 4935380; 473366, 4935376; 473365, 4935371; 473363, 4935367; 473361, 4935361; 473361, 4935354; 473366, 4935347; 473366, 4935343; 473363, 4935338; 473357, 4935335; 473352, 4935331; 473348, 4935324; 473350, 4935318; 473352, 4935314; 473357, 4935313; 473362, 4935313; 473365, 4935312; 473368, 4935310; 473370, 4935307; 473367, 4935300; 473367, 4935294; 473369, 4935288; 473370, 4935285; 473373, 4935281; 473375, 4935278; 473374, 4935277; 473371, 4935276; 473369, 4935274; 473366, 4935273; 473365, 4935270; 473364, 4935268; 473361, 4935264; 473357, 4935268; 473355, 4935269; 473352, 4935272; 473351, 4935274; 473345, 4935274; 473340, 4935272; 473337, 4935270; 473333, 4935269; 473326, 4935266; 473325, 4935260; 473328, 4935255; 473329, 4935250; 473331, 4935246; 473333, 4935242; 473337, 4935238; 473340, 4935236; 473342, 4935232; 473348, 4935228; 473348, 4935225; 473348, 4935216; 473348, 4935211; 473350, 4935205; 473354, 4935202; 473382, 4935154; 473386, 4935149; 473403, 4935128; 473379, 4935102; 473342, 4935074; 473336, 4935083; 473333, 4935091; 473298, 4935146; 473303, 4935150; 473306, 4935153; 473303, 4935164; 473299, 4935168; 473297, 4935173; 473295, 4935178; 473293, 4935183; 473288, 4935189; 473286, 4935194; 473284, 4935202; 473282, 4935206; 473279, 4935209; 473281, 4935220; 473281, 4935226; 473280, 4935233; 473282, 4935241; 473282, 4935246; 473284, 4935251; 473288, 4935260; 473296, 4935267; 473303, 4935275; 473312, 4935288; 473316, 4935299; 473319, 4935311; 473322, 4935323; 473327, 4935333; 473330, 4935342; 473335, 4935351; 473341, 4935361; 473349, 4935372; 473352, 4935380; 473357, 4935391; 473366, 4935400; 473373, 4935410; 473378, 4935416; 473388, 4935424; 473410, 4935441; 473437, 4935441; 473431, 4935402.

(ii) Unit 4B (WD–4B): 473855, 4934497; 473838, 4934445; 473821, 4934449; 473811, 4934458; 473800, 4934466; 473793, 4934479; 473780, 4934496; 473770, 4934518; 473760, 4934538; 473758, 4934544; 473754, 4934561; 473754, 4934599; 473757, 4934611; 473766, 4934617; 473774, 4934622; 473782, 4934626; 473789, 4934629; 473796, 4934630; 473803, 4934635; 473807, 4934641; 473815, 4934642; 473821, 4934643; 473831, 4934644; 473845, 4934643; 473857, 4934639; 473873, 4934635; 473882, 4934628; 473892, 4934619; 473894, 4934609; 473855, 4934497.

(iii) Note: Map 5 (Unit 4 for *Erigeron decumbens* var. *decumbens* (WD–4)) follows:


Map 5, Unit WD-4
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Mulkey Creek
Oak Creek
NW Oak Creek Dr
WD-4A
WD-4B
Rosecrest Dr
SW Reservoir Ave
Stream
Road
Final Critical Habitat
0 0.15 0.3 Miles
0 0.15 0.3 Kilometers
Benton County
N
Locational Index

(10) Unit 5 of *Erigeron decumbens* var. *decumbens* (WD–5), Benton County, Oregon.

(i) Unit 5 (WD–5): 474073, 4926323; 474080, 4926323; 474086, 4926324; 474091, 4926323; 474091, 4926315; 474088, 4926311; 474087, 4926307; 474083, 4926305; 474079, 4926304; 474074, 4926304; 474074, 4926299; 474074, 4926292; 474070, 4926293; 474063, 4926294; 474054, 4926289; 474049, 4926283; 474044, 4926282; 474040, 4926281; 474034, 4926277; 474034, 4926271; 474035, 4926268; 474034, 4926263; 474027, 4926260; 474024, 4926256; 474020, 4926254; 474017, 4926259; 474014, 4926263; 474007, 4926264; 474003, 4926259; 474000, 4926252; 473997, 4926247; 473997, 4926241; 474000, 4926236; 474002, 4926230; 473997, 4926229; 473993, 4926232; 473991, 4926227; 473988, 4926223; 473986, 4926215; 473989, 4926211; 473989, 4926205; 473992, 4926198; 473997, 4926197; 474000, 4926196; 474004, 4926192; 474007, 4926188; 474010, 4926183; 474014, 4926179; 474024, 4926179; 474025, 4926184; 474029, 4926186; 474033, 4926183; 474046, 4926187; 474050, 4926192; 474056, 4926192; 474063, 4926196; 474068, 4926201; 474074, 4926199; 474067, 4926192; 474069, 4926183; 474067, 4926179; 474064, 4926173; 474064, 4926166; 474064, 4926159; 474064, 4926150; 474060, 4926147; 474060, 4926140; 474067, 4926138; 474075, 4926131; 474080, 4926125; 474088, 4926119; 474092, 4926116; 474098, 4926115; 474100, 4926117; 474105, 4926118; 474112, 4926120; 474116, 4926121; 474120, 4926123; 474125, 4926124; 474127, 4926124; 474133, 4926121; 474135, 4926122; 474139, 4926126; 474142, 4926128; 474146, 4926131; 474151, 4926133; 474159, 4926135; 474165, 4926137; 474170, 4926139; 474176, 4926140; 474178, 4926144; 474179, 4926148; 474181, 4926151; 474185, 4926148; 474190, 4926142; 474198, 4926141; 474205, 4926144; 474211, 4926142; 474218, 4926140; 474220, 4926133; 474224, 4926124; 474229, 4926118; 474231, 4926112; 474235, 4926107; 474241, 4926105; 474244, 4926099; 474247, 4926090; 474252, 4926085; 474258, 4926080; 474262, 4926077; 474263, 4926070; 474270, 4926068; 474270, 4926066; 474274, 4926062; 474281, 4926058; 474287, 4926053; 474290, 4926049; 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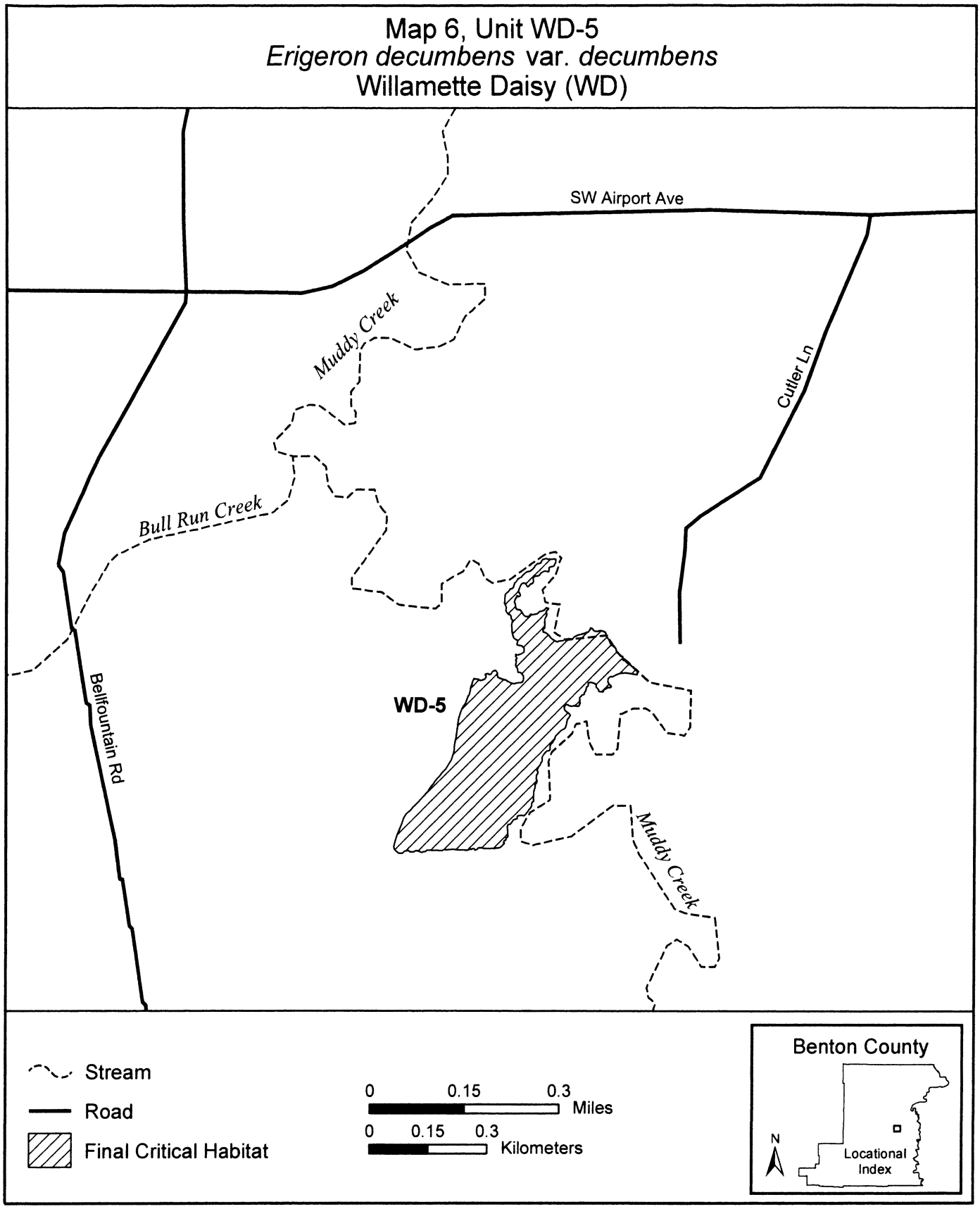
473985, 4926124; 473983, 4926131; 473981, 4926141; 473981, 4926142; 473981, 4926149; 473980, 4926156; 473981, 4926163; 473982, 4926169; 473979, 4926174; 473978, 4926180; 473972, 4926186; 473971, 4926184; 473968, 4926189; 473965, 4926194; 473965, 4926201; 473964, 4926208; 473961, 4926213; 473961, 4926218; 473961, 4926225; 473963, 4926230; 473964, 4926235; 473967, 4926238; 473971, 4926241; 473974, 4926245; 473975, 4926247; 473981, 4926250; 473984, 4926253; 473985, 4926258; 473987, 4926264; 473991, 4926267; 473992, 4926269; 473996, 4926273; 473999, 4926275; 474004, 4926278; 474005, 4926279; 474009, 4926284; 474013, 4926288; 474017, 4926290; 474019, 4926291; 474021, 4926293; 474024, 4926293; 474027, 4926294; 474031, 4926297; 474035, 4926301; 474037, 4926303; 474039, 4926307; 474043, 4926310; 474045, 4926312; 474049, 4926313; 474050, 4926313; 474052, 4926314; 474054, 4926315; 474055, 4926318; 474057, 4926321; 474059, 4926323; 474063, 4926325; 474067, 4926326; 474070, 4926324; 474073, 4926323.

(ii) Note: Map 6 (Unit 5 for *Erigeron decumbens* var. *decumbens* (WD–5)) follows:


Map 6, Unit WD-5
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
SW Airport Ave
Muddy Creek
Cutler Ln
Bull Run Creek
Bellfountain Rd
WD-5
Muddy Creek
Stream
Road
Final Critical Habitat
0 0.15 0.3 Miles
0 0.15 0.3 Kilometers
Benton County
N
Locational Index

BILLING CODE 4310–55–C

(11) Unit 6 of *Erigeron decumbens* var. *decumbens* (WD–6), Lane County, Oregon.

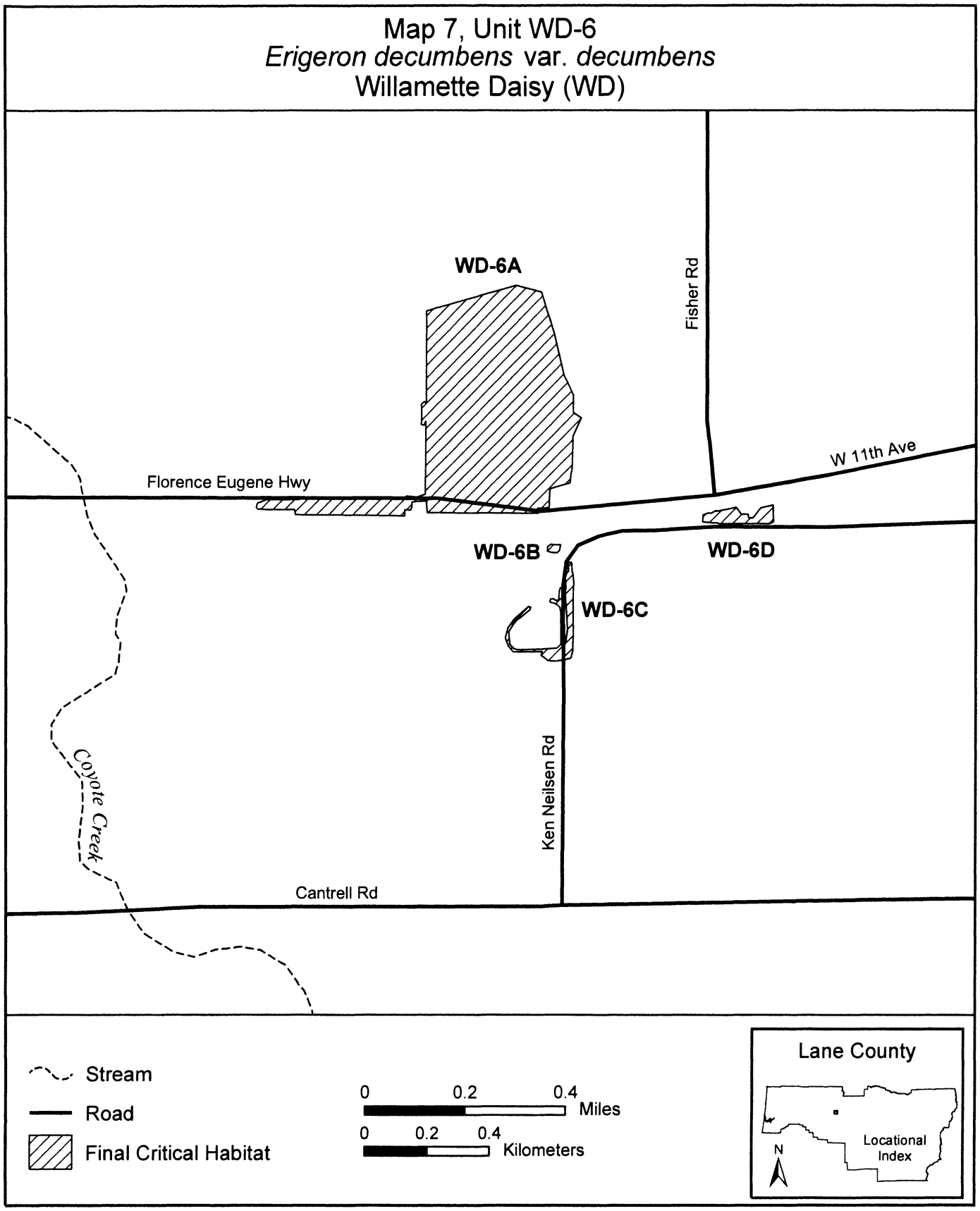
(i) Unit 6A (WD–6A): 479981, 4878131; 479980, 4878075; 480005, 4878058; 479979, 4878000; 479976, 4877895; 479973, 4877884; 479970, 4877854; 479905, 4877836; 479902, 4877775; 479866, 4877774; 479869, 4877759; 479513, 4877760; 479509, 4877798; 479466, 4877794; 479463, 4877792; 479464, 4877792; 479465, 4877781; 479461, 4877769; 479441, 4877769; 479440, 4877751; 479220, 4877753; 479148, 4877754; 479138, 4877753; 479138, 4877754; 479092, 4877754; 479090, 4877770; 479004, 4877770; 478975, 4877772; 478968, 4877777; 478973, 4877791; 478982, 4877794; 479002, 4877802; 479105, 4877802; 479109, 4877806; 479163, 4877808; 479221, 4877806; 479298, 4877808; 479441, 4877808; 479448, 4877812; 479479, 4877810; 479477, 4877808; 479507, 4877819; 479509, 4878049; 479503, 4878036; 479494, 4878038; 479495, 4878064; 479495, 4878081; 479494, 4878101; 479503, 4878110; 479509, 4878106; 479511, 4878393; 479798, 4878473; 479879, 4878451; 479919, 4878324; 479950, 4878194; 479981, 4878131.

(ii) Unit 6B (WD–6B): 479936, 4877638; 479929, 4877634; 479911, 4877635; 479898, 4877639; 479899, 4877653; 479910, 4877660; 479925, 4877659; 479939, 4877658; 479938, 4877652; 479936, 4877638.

(iii) Unit 6C (WD–6C): 479980, 4877368; 479979, 4877324; 479978, 4877323; 479978, 4877320; 479978, 4877320; 479973, 4877301; 479948, 4877295; 479922, 4877293; 479899, 4877294; 479894, 4877299; 479878, 4877312; 479882, 4877323; 479789, 4877322; 479773, 4877340; 479764, 4877365; 479771, 4877397; 479794, 4877426; 479837, 4877464; 479844, 4877462; 479841, 4877454; 479798, 4877419; 479784, 4877398; 479774, 4877383; 479775, 4877364; 479778, 4877346; 479790, 4877332; 479801, 4877328; 479900, 4877331; 479929, 4877334; 479940, 4877344; 479941, 4877446; 479937, 4877462; 479931, 4877469; 479920, 4877474; 479905, 4877478; 479908, 4877488; 479916, 4877488; 479928, 4877482; 479935, 4877486; 479934, 4877499; 479935, 4877513; 479938, 4877522; 479943, 4877523; 479948, 4877509; 479949, 4877344; 479947, 4877340; 479955, 4877348; 479963, 4877391; 479960, 4877425; 479954, 4877508; 479957, 4877527; 479954, 4877553; 479959, 4877572; 479964, 4877574; 479965, 4877580; 479963, 4877603; 479975, 4877603; 479976, 4877574; 479979, 4877568; 479982, 4877540; 479981, 4877511; 479981, 4877439; 479980, 4877368.

(iv) Unit 6D (WD–6D): 480616, 4877784; 480618, 4877730; 480603, 4877726; 480494, 4877726; 480444, 4877726; 480436, 4877729; 480422, 4877729; 480392, 4877731; 480393, 4877753; 480411, 4877760; 480418, 4877759; 480435, 4877767; 480435, 4877764; 480500, 4877776; 480515, 4877756; 480520, 4877756; 480536, 4877756; 480538, 4877744; 480553, 4877744; 480577, 4877776; 480616, 4877784.

(v) Note: Map 7 (Unit 6 for *Erigeron decumbens* var. *decumbens* (WD–6)) follows:

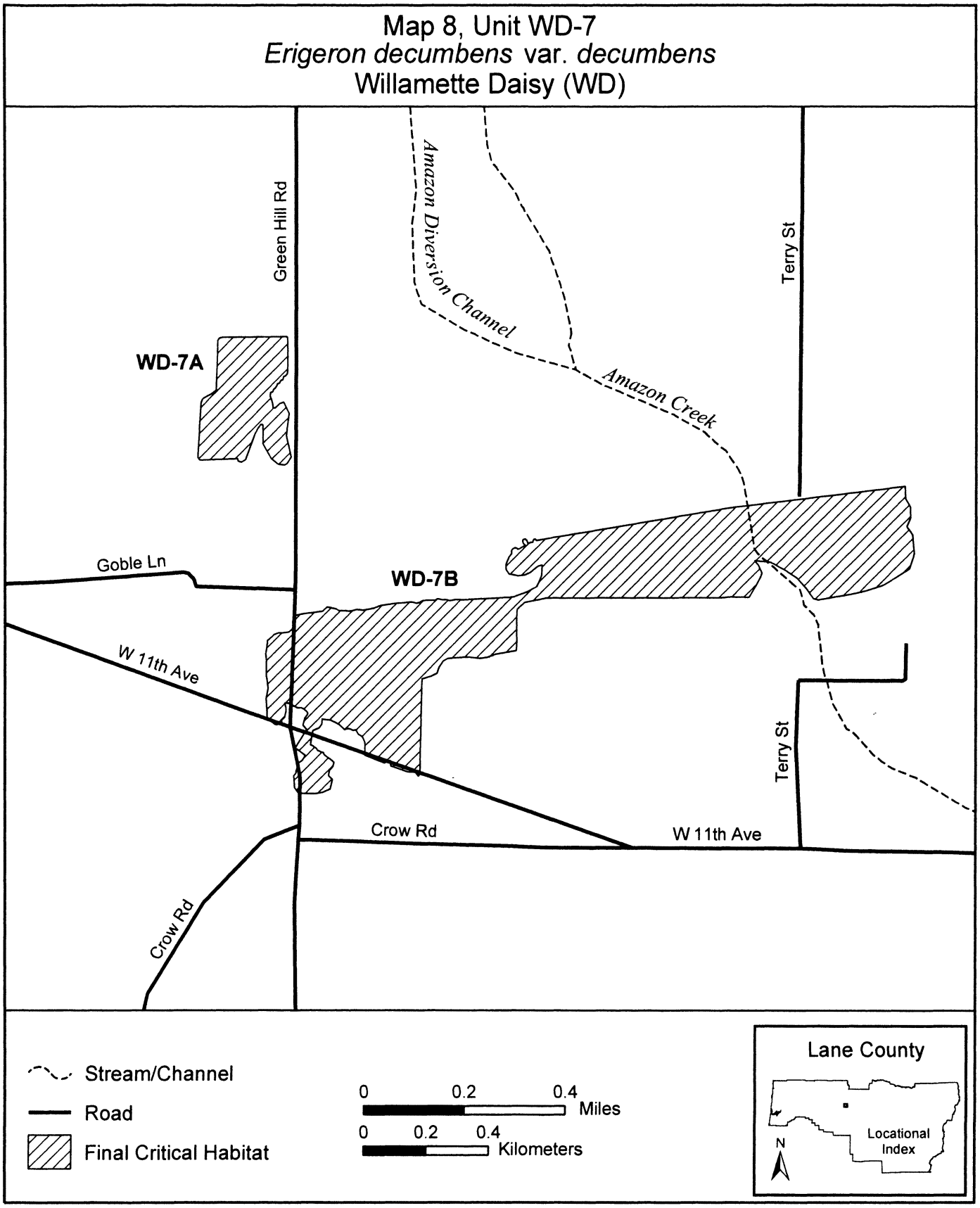

Map 7, Unit WD-6
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
WD-6A
Fisher Rd
W 11th Ave
Florence Eugene Hwy
WD-6B
WD-6D
WD-6C
Ken Neilsen Rd
Coyote Creek
Cantrell Rd
Stream
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Lane County
Locational Index
N

(12) Unit 7 for *Erigeron decumbens* var. *decumbens* (WD–7), Lane County, Oregon.

(i) Unit 7A (WD–7A): 483250, 4878670; 483258, 4878669; 483272, 4878683; 483285, 4878687; 483302, 4878653; 483294, 4878582; 483309, 4878514; 483297, 4878495; 483289, 4878490; 483268, 4878492; 483247, 4878510; 483220, 4878557; 483220, 4878609; 483220, 4878615; 483217, 4878617; 483211, 4878618; 483207, 4878611; 483203, 4878602; 483192, 4878583; 483184, 4878561; 483164, 4878507; 483151, 4878499; 483141, 4878502; 483140, 4878509; 483019, 4878506; 483013, 4878513; 483013, 4878524; 483022, 4878686; 483026, 4878696; 483030, 4878700; 483059, 4878715; 483070, 4878725; 483076, 4878881; 483082, 4878888; 483092, 4878891; 483296, 4878892; 483299, 4878886; 483299, 4878836; 483298, 4878805; 483297, 4878777; 483292, 4878770; 483286, 4878767; 483282, 4878758; 483274, 4878754; 483272, 4878748; 483266, 4878745; 483264, 4878738; 483260, 4878732; 483253, 4878726; 483250, 4878720; 483244, 4878717; 483241, 4878706; 483246, 4878696; 483250, 4878685; 483251, 4878678; 483250, 4878670.

(ii) Unit 7B (WD–7B): 485283, 4878271; 485286, 4878248; 485290, 4878211; 485280, 4878182; 485273, 4878164; 485255, 4878152; 485226, 4878134; 485191, 4878112; 485139, 4878096; 485082, 4878082; 485037, 4878076; 484986, 4878067; 484970, 4878070; 484949, 4878100; 484919, 4878135; 484885, 4878157; 484861, 4878170; 484835, 4878184; 484822, 4878185; 484785, 4878189; 484796, 4878175; 484803, 4878161; 484808, 4878152; 484802, 4878135; 484790, 4878112; 484768, 4878074; 484709, 4878076; 484682, 4878073; 484122, 4878072; 484053, 4878057; 484030, 4878036; 484029, 4878010; 484029, 4877979; 484029, 4877937; 484027, 4877906; 483963, 4877895; 483936, 4877885; 483911, 4877880; 483867, 4877886; 483809, 4877880; 483794, 4877873; 483780, 4877852; 483774, 4877835; 483752, 4877825; 483726, 4877816; 483719, 4877516; 483716, 4877509; 483704, 4877522; 483682, 4877522; 483627, 4877541; 483624, 4877559; 483607, 4877551; 483544, 4877576; 483544, 4877596; 483544, 4877617; 483537, 4877633; 483524, 4877641; 483515, 4877655; 483506, 4877653; 483492, 4877660; 483480, 4877656; 483461, 4877673; 483434, 4877687; 483418, 4877688; 483407, 4877690; 483406, 4877673; 483399, 4877663; 483377, 4877652; 483371, 4877607; 483376, 4877606; 483386, 4877599; 483390, 4877596; 483394, 4877589; 483397, 4877590; 483399, 4877588; 483413, 4877583; 483416, 4877577; 483441, 4877557; 483445, 4877552; 483441, 4877539; 483431, 4877527; 483429, 4877512; 483440, 4877498; 483434, 4877468; 483409, 4877458; 483389, 4877453; 483354, 4877453; 483333, 4877456; 483321, 4877471; 483318, 4877509; 483325, 4877517; 483325, 4877525; 483331, 4877540; 483332, 4877540; 483332, 4877550; 483344, 4877559; 483354, 4877574; 483328, 4877594; 483323, 4877597; 483323, 4877599; 483359, 4877655; 483347, 4877670; 483352, 4877691; 483363, 4877705; 483360, 4877711; 483349, 4877721; 483340, 4877725; 483337, 4877726; 483328, 4877725; 483301, 4877740; 483290, 4877740; 483292, 4877729; 483293, 4877723; 483293, 4877715; 483289, 4877694; 483281, 4877686; 483279, 4877679; 483265, 4877671; 483263, 4877674; 483258, 4877672; 483242, 4877686; 483239, 4877689; 483234, 4877690; 483234, 4877711; 483230, 4877753; 483237, 4877787; 483231, 4877827; 483231, 4877874; 483228, 4877895; 483233, 4877918; 483232, 4877922; 483235, 4877927; 483234, 4877928; 483234, 4877938; 483236, 4877939; 483256, 4877956; 483270, 4877961; 483284, 4877961; 483302, 4877964; 483311, 4877972; 483315, 4877979; 483315, 4877990; 483314, 4877996; 483315, 4877998; 483318, 4878012; 483322, 4878016; 483351, 4878022; 483376, 4878024; 483409, 4878030; 483424, 4878042; 483452, 4878036; 483461, 4878030; 483498, 4878029; 483518, 4878034; 483538, 4878032; 483571, 4878038; 483593, 4878046; 483617, 4878050; 483645, 4878054; 483668, 4878056; 483687, 4878058; 483699, 4878057; 483709, 4878054; 483718, 4878057; 483727, 4878063; 483736, 4878064; 483755, 4878064; 483768, 4878063; 483776, 4878068; 483791, 4878065; 483803, 4878066; 483813, 4878062; 483823, 4878064; 483832, 4878066; 483842, 4878066; 483855, 4878065; 484016, 4878074; 484063, 4878091; 484091, 4878107; 484108, 4878143; 484109, 4878176; 484096, 4878173; 484089, 4878167; 484073, 4878153; 484055, 4878144; 484032, 4878141; 484005, 4878147; 483994, 4878161; 483994, 4878179; 484003, 4878200; 484012, 4878210; 484011, 4878216; 484013, 4878222; 484017, 4878226; 484023, 4878229; 484028, 4878228; 484032, 4878224; 484056, 4878237; 484048, 4878244; 484047, 4878252; 484050, 4878256; 484055, 4878257; 484060, 4878253; 484064, 4878243; 484073, 4878246; 484079, 4878248; 484079, 4878253; 484082, 4878256; 484086, 4878256; 484090, 4878254; 484726, 4878359; 484731, 4878360; 485192, 4878416; 485260, 4878425; 485261, 4878387; 485276, 4878359; 485276, 4878324; 485264, 4878298; 485283, 4878271.

(iii) Note: Map 8 (Unit 7 for *Erigeron decumbens* var. *decumbens* (WD–7)) follows:


Map 8, Unit WD-7
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Green Hill Rd
Amazon Diversion Channel
Terry St
WD-7A
Amazon Creek
Goble Ln
WD-7B
W 11th Ave
Terry St
Crow Rd
W 11th Ave
Crow Rd
Stream/Channel
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Lane County
Locational Index
N

(13) Unit 8 for *Erigeron decumbens* var. *decumbens* (WD–8), Lane County, Oregon.

(i) Unit 8A (WD–8A): 485561, 4877295; 485562, 4877284; 485629, 4877284; 485645, 4877274; 485654, 4877257; 485673, 4877230; 485694, 4877225; 485718, 4877215; 485737, 4877213; 485743, 4877226; 485986, 4877222; 486046, 4877221; 486095, 4877215; 486136, 4877209; 486179, 4877192; 486205, 4877172; 486228, 4877154; 486241, 4877142; 486257, 4877125; 486269, 4877102; 486266, 4876751; 486267, 4876727; 486279, 4876713; 486287, 4876694; 486294, 4876684; 486296, 4876591; 486286, 4876460; 486279, 4876449; 486270, 4876410; 486260, 4876389; 486252, 4876169; 485950, 4876177; 485863, 4876180; 485857, 4876232; 485863, 4876325; 485866, 4876383; 485866, 4876458; 485866, 4876496; 485857, 4876554; 485854, 4876621; 485852, 4876696; 485860, 4876742; 485840, 4876789; 485797, 4876824; 485759, 4876841; 485701, 4876856; 485657, 4876850; 485625, 4876847; 485623, 4876992; 485625, 4877015; 485640, 4877044; 485665, 4877071; 485642, 4877087; 485633, 4877125; 485643, 4877218; 485623, 4877249; 485593, 4877249; 485562, 4877250; 485534, 4877251; 485535, 4877259; 485557, 4877293; 485561, 4877295.

(ii) Unit 8B (WD–8B): 486605, 4876640; 486608, 4876631; 486627, 4876636; 486632, 4876635; 486640, 4876635; 486657, 4876628; 486661, 4876606; 486650, 4876579; 486656, 4876557; 486668, 4876600; 486683, 4876621; 486704, 4876623; 486726, 4876604; 486732, 4876587; 486781, 4876558; 486789, 4876539; 486795, 4876512; 486782, 4876491; 486770, 4876484; 486741, 4876473; 486688, 4876472; 486667, 4876485; 486657, 4876501; 486653, 4876529; 486654, 4876499; 486652, 4876472; 486642, 4876455; 486627, 4876441; 486618, 4876441; 486602, 4876442; 486601, 4876435; 486602, 4876406; 486602, 4876397; 486598, 4876393; 486593, 4876396; 486591, 4876407; 486591, 4876417; 486590, 4876426; 486590, 4876435; 486590, 4876443; 486562, 4876457; 486556, 4876492; 486557, 4876500; 486551, 4876505; 486547, 4876506; 486540, 4876510; 486543, 4876524; 486547, 4876537; 486552, 4876545; 486557, 4876550; 486561, 4876557; 486562, 4876564; 486582, 4876581; 486589, 4876597; 486590, 4876602; 486589, 4876609; 486589, 4876621; 486589, 4876635; 486590, 4876653; 486591, 4876659; 486594, 4876667; 486600, 4876669; 486605, 4876666; 486606, 4876654; 486605, 4876640.

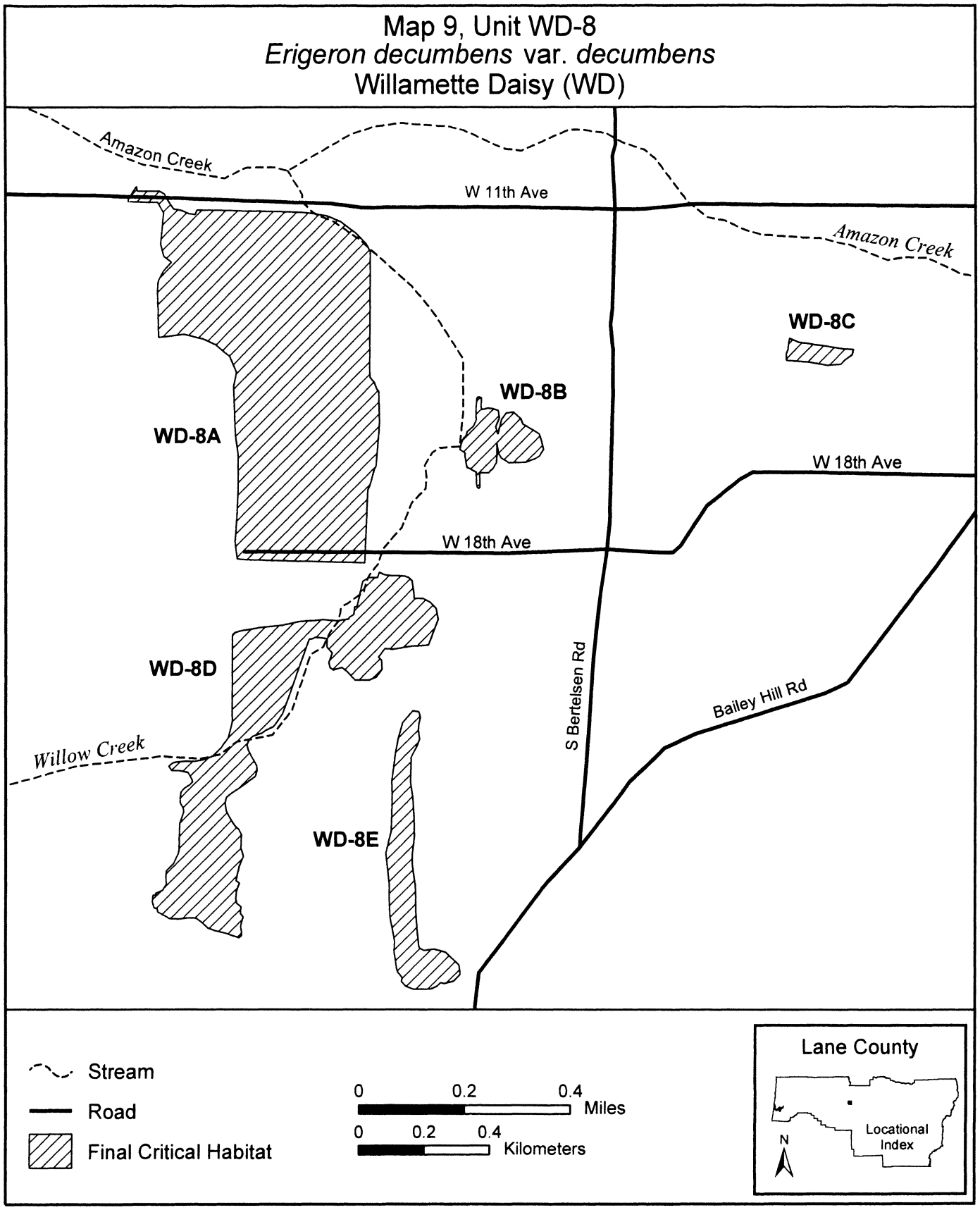
(iii) Unit 8C (WD–8C): 487695, 4876766; 487655, 4876763; 487598, 4876773; 487547, 4876776; 487531, 4876778; 487530, 4876798; 487535, 4876810; 487540, 4876843; 487567, 4876831; 487597, 4876828; 487623, 4876823; 487647, 4876820; 487687, 4876814; 487710, 4876811; 487734, 4876809; 487730, 4876793; 487708, 4876778; 487695, 4876766.

(iv) Unit 8D (WD–8D): 486312, 4876132; 486334, 4876130; 486354, 4876130; 486373, 4876128; 486385, 4876125; 486397, 4876116; 486401, 4876077; 486401, 4876062; 486428, 4876063; 486453, 4876049; 486469, 4876031; 486475, 4875999; 486445, 4875922; 486395, 4875920; 486336, 4875909; 486315, 4875912; 486294, 4875885; 486303, 4875877; 486304, 4875848; 486288, 4875827; 486264, 4875816; 486223, 4875817; 486199, 4875842; 486181, 4875854; 486167, 4875850; 486155, 4875847; 486146, 4875854; 486143, 4875870; 486148, 4875885; 486154, 4875898; 486137, 4875916; 486136, 4875925; 486137, 4875941; 486121, 4875943; 486100, 4875945; 486093, 4875941; 486082, 4875939; 486003, 4875714; 485990, 4875696; 485981, 4875684; 485974, 4875676; 485955, 4875666; 485939, 4875656; 485912, 4875647; 485902, 4875639; 485895, 4875620; 485899, 4875606; 485904, 4875594; 485915, 4875575; 485924, 4875559; 485924, 4875543; 485920, 4875526; 485906, 4875516; 485885, 4875499; 485852, 4875477; 485832, 4875461; 485827, 4875446; 485830, 4875423; 485841, 4875400; 485858, 4875375; 485869, 4875364; 485878, 4875349; 485876, 4875339; 485875, 4875309; 485880, 4875299; 485883, 4875283; 485877, 4875269; 485871, 4875255; 485865, 4875234; 485862, 4875211; 485862, 4875210; 485871, 4875203; 485867, 4875194; 485862, 4875177; 485861, 4875157; 485863, 4875143; 485877, 4875132; 485875, 4875121; 485875, 4875112; 485883, 4875101; 485875, 4875077; 485875, 4875069; 485878, 4875055; 485878, 4875045; 485871, 4875038; 485852, 4875045; 485827, 4875053; 485803, 4875059; 485777, 4875068; 485754, 4875087; 485740, 4875098; 485723, 4875099; 485706, 4875097; 485686, 4875096; 485665, 4875097; 485657, 4875098; 485623, 4875117; 485622, 4875126; 485613, 4875129; 485608, 4875144; 485607, 4875147; 485610, 4875167; 485619, 4875168; 485618, 4875173; 485638, 4875182; 485650, 4875199; 485648, 4875223; 485650, 4875241; 485671, 4875264; 485685, 4875291; 485688, 4875304; 485690, 4875382; 485701, 4875417; 485700, 4875429; 485692, 4875447; 485691, 4875459; 485694, 4875478; 485703, 4875488; 485718, 4875497; 485729, 4875509; 485727, 4875518; 485715, 4875537; 485687, 4875543; 485667, 4875543; 485657, 4875556; 485671, 4875567; 485688, 4875570; 485708, 4875571; 485735, 4875571; 485760, 4875576; 485789, 4875586; 485817, 4875614; 485837, 4875642; 485846, 4875674; 485850, 4875691; 485850, 4875952; 485858, 4875959; 485877, 4875965; 485928, 4875973; 486003, 4875982; 486052, 4875993; 486097, 4875994; 486125, 4875998; 486142, 4875995; 486166, 4875994; 486203, 4876000; 486204, 4876005; 486218, 4876012; 486220, 4876026; 486220, 4876036; 486228, 4876038; 486246, 4876113; 486264, 4876125; 486291, 4876126; 486296, 4876141; 486312, 4876132.

(v) Unit 8E (WD–8E): 486419, 4875009; 486432, 4875002; 486464, 4875005; 486499, 4874996; 486540, 4874957; 486542, 4874941; 486543, 4874928; 486523, 4874907; 486522, 4874907; 486495, 4874901; 486485, 4874903; 486482, 4874900; 486475, 4874893; 486454, 4874883; 486401, 4874883; 486379, 4874893; 486365, 4874907; 486367, 4874918; 486360, 4874928; 486354, 4874935; 486350, 4874948; 486349, 4874964; 486343, 4874996; 486343, 4875029; 486329, 4875101; 486327, 4875156; 486327, 4875203; 486318, 4875294; 486333, 4875362; 486336, 4875470; 486335, 4875513; 486347, 4875595; 486355, 4875644; 486368, 4875689; 486398, 4875724; 486417, 4875722; 486421, 4875705; 486417, 4875683; 486415, 4875666; 486419, 4875638; 486409, 4875612; 486394, 4875582; 486392, 4875509; 486398, 4875465; 486402, 4875400; 486404, 4875343; 486397, 4875292; 486397, 4875264; 486406, 4875197; 486408, 4875161; 486409, 4875120; 486413, 4875059; 486416, 4875027; 486417, 4875019; 486419, 4875009.

(vi) Note: Map 9 (Unit 8 for *Erigeron decumbens* var. *decumbens* (WD–8)) follows:

BILLING CODE 4310–55–P


Map 9, Unit WD-8
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Amazon Creek
W 11th Ave
Amazon Creek
WD-8C
WD-8B
WD-8A
W 18th Ave
W 18th Ave
WD-8D
S Bertelsen Rd
Bailey Hill Rd
Willow Creek
WD-8E
Stream
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Lane County
Locational Index
N

BILLING CODE 4310–55–C

(14) Unit 9 for *Erigeron decumbens* var. *decumbens* (WD–9), Lane County, Oregon.

(i) Unit 9A (WD–9A): 482419, 4875157; 482433, 4875154; 482454, 4875162; 482478, 4875158; 482496, 4875142; 482509, 4875124; 482504, 4875110; 482515, 4875097; 482526, 4875086; 482525, 4875072; 482519, 4875066; 482529, 4875056; 482532, 4875040; 482545, 4875028; 482556, 4875030; 482568, 4875031; 482626, 4875009; 482629, 4874992; 482636, 4874983; 482629, 4874972; 482632, 4874952; 482640, 4874945; 482635, 4874939; 482635, 4874898; 482653, 4874892; 482671, 4874893; 482682, 4874904; 482700, 4874893; 482716, 4874892; 482739, 4874889; 482756, 4874875; 482773, 4874872; 482781, 4874859; 482772, 4874853; 482752, 4874852; 482749, 4874810; 482762, 4874804; 482762, 4874795; 482751, 4874790; 482747, 4874782; 482759, 4874776; 482769, 4874768; 482792, 4874770; 482822, 4874745; 482818, 4874718; 482833, 4874707; 482853, 4874701; 482870, 4874682; 482880, 4874667; 482898, 4874283; 482886, 4874262; 482866, 4874250; 482850, 4874230; 482840, 4874202; 482843, 4874175; 482848, 4874143; 482831, 4874127; 482819, 4874104; 482811, 4874080; 482772, 4874052; 482735, 4874031; 482728, 4874017; 482725, 4873993; 482715, 4873979; 482701, 4873966; 482371, 4873978; 482338, 4873981; 482305, 4873976; 482243, 4873963; 482227, 4873968; 482236, 4873984; 482296, 4874007; 482308, 4874028; 482365, 4874052; 482381, 4874074; 482409, 4874087; 482432, 4874100; 482429, 4874112; 482412, 4874116; 482401, 4874102; 482384, 4874103; 482373, 4874090; 482362, 4874085; 482359, 4874074; 482339, 4874069; 482328, 4874073; 482322, 4874065; 482312, 4874076; 482315, 4874085; 482329, 4874094; 482351, 4874096; 482461, 4874167; 482445, 4874211; 482441, 4874229; 482438, 4874247; 482451, 4874269; 482449, 4874289; 482435, 4874303; 482448, 4874321; 482466, 4874321; 482473, 4874339; 482483, 4874338; 482508, 4874311; 482509, 4874293; 482534, 4874303; 482586, 4874349; 482591, 4874373; 482598, 4874362; 482616, 4874367; 482620, 4874381; 482609, 4874402; 482608, 4874420; 482600, 4874437; 482599, 4874448; 482609, 4874441; 482618, 4874442; 482628, 4874451; 482631, 4874471; 482608, 4874466; 482613, 4874486; 482623, 4874489; 482629, 4874504; 482625, 4874514; 482626, 4874524; 482639, 4874531; 482636, 4874540; 482631, 4874555; 482640, 4874567; 482622, 4874604; 482625, 4874641; 482591, 4874698; 482570, 4874705; 482567, 4874723; 482563, 4874736; 482537, 4874761; 482538, 4874773; 482524, 4874785; 482506, 4874780; 482473, 4874804; 482429, 4874833; 482376, 4874861; 482376, 4875220; 482431, 4875221; 482407, 4875176; 482419, 4875157.

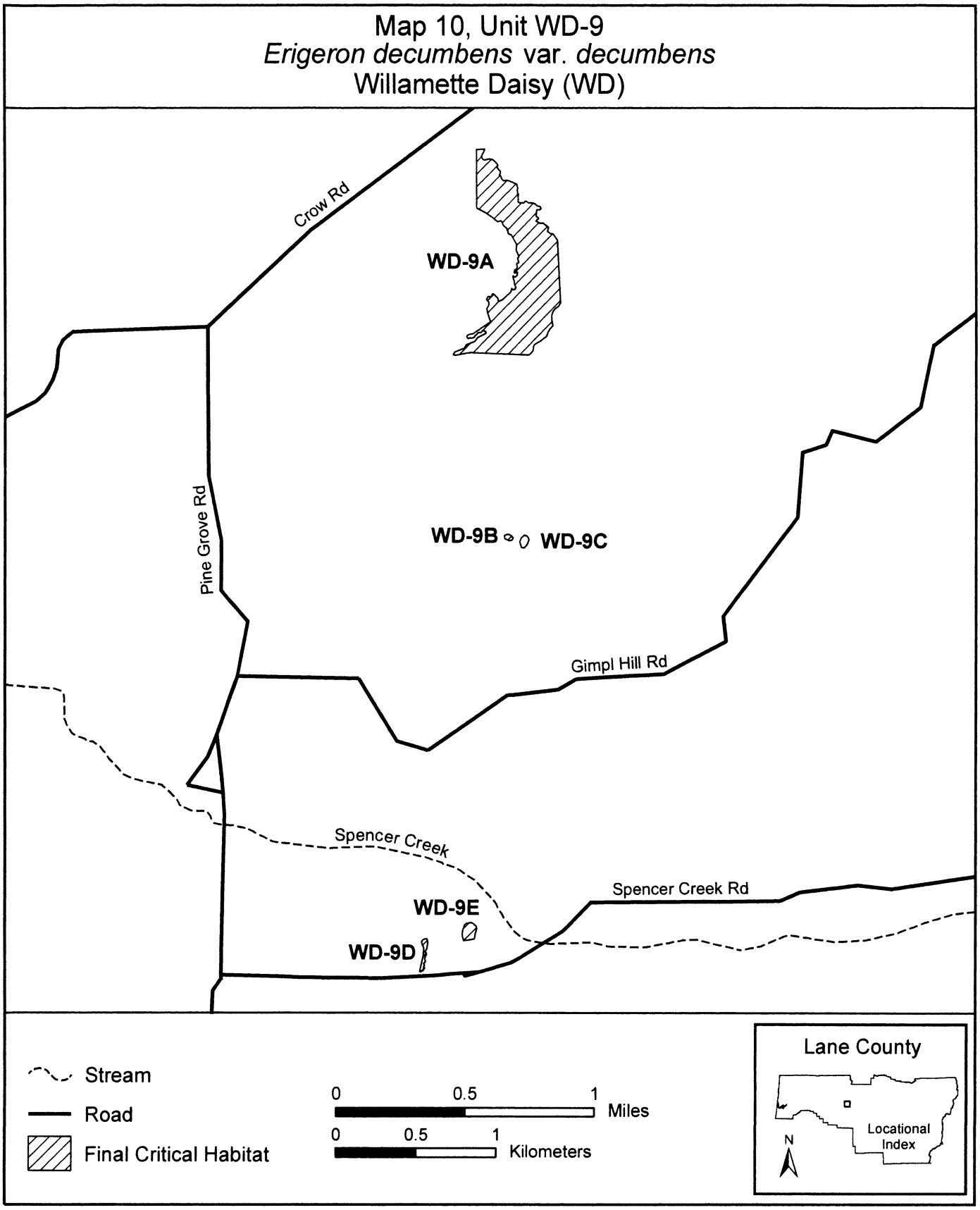
(ii) Unit 9B (WD–9B): 482595, 4872832; 482581, 4872828; 482575, 4872828; 482571, 4872828; 482559, 4872835; 482548, 4872841; 482549, 4872860; 482568, 4872866; 482570, 4872865; 482588, 4872857; 482600, 4872844; 482595, 4872832.

(iii) Unit 9C (WD–9C): 482679, 4872790; 482668, 4872783; 482654, 4872785; 482645, 4872810; 482644, 4872821; 482654, 4872845; 482670, 4872860; 482689, 4872856; 482699, 4872834; 482689, 4872804; 482679, 4872790.

(iv) Unit 9D (WD–9D): 482043, 4870174; 482032, 4870168; 482021, 4870170; 482023, 4870180; 482031, 4870210; 482044, 4870268; 482047, 4870306; 482045, 4870320; 482038, 4870333; 482034, 4870350; 482039, 4870362; 482049, 4870370; 482059, 4870374; 482068, 4870373; 482070, 4870364; 482072, 4870350; 482070, 4870326; 482068, 4870308; 482062, 4870303; 482058, 4870291; 482064, 4870284; 482063, 4870270; 482055, 4870266; 482058, 4870256; 482052, 4870252; 482055, 4870244; 482058, 4870235; 482055, 4870224; 482046, 4870222; 482052, 4870210; 482045, 4870199; 482047, 4870193; 482054, 4870192; 482051, 4870187; 482043, 4870174.

(v) Unit 9E (WD–9E): 482315, 4870363; 482297, 4870361; 482292, 4870377; 482285, 4870392; 482285, 4870408; 482285, 4870413; 482292, 4870429; 482296, 4870440; 482299, 4870452; 482301, 4870459; 482308, 4870465; 482324, 4870472; 482342, 4870473; 482356, 4870468; 482361, 4870461; 482374, 4870450; 482377, 4870438; 482373, 4870421; 482368, 4870408; 482366, 4870391; 482362, 4870374; 482349, 4870369; 482332, 4870366; 482315, 4870363.

(vi) Note: Map 10 (Unit 9 for *Erigeron decumbens* var. *decumbens* (WD–9)) follows:


Map 10, Unit WD-9
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Crow Rd
WD-9A
Pine Grove Rd
WD-9B
WD-9C
Gimpl Hill Rd
Spencer Creek
Spencer Creek Rd
WD-9E
WD-9D
Stream
Road
Final Critical Habitat
0
0.5
1
Miles
0
0.5
1
Kilometers
Lane County
Locational Index
N

* * * * *

Family Fabaceae: *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine).

(1) Critical habitat units are depicted for Benton, Lane, Polk, and Yamhill Counties, Oregon, and Lewis County, Washington, on the maps below.

(2) The primary constituent elements of critical habitat for the *Lupinus sulphureus* ssp. *kincaidii* are the habitat components that provide:

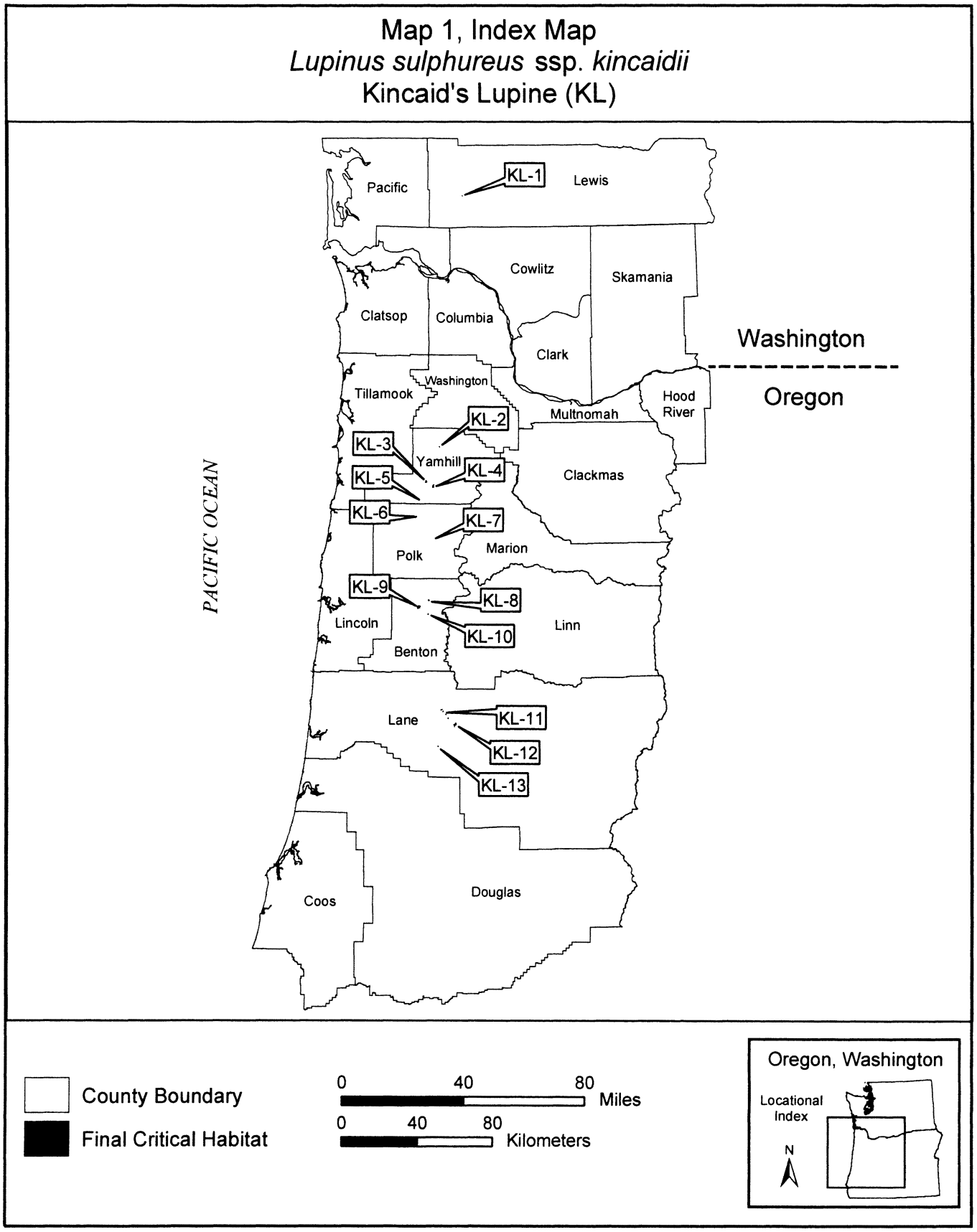
(i) Early seral upland prairie, or oak savanna habitat with a mosaic of low-growing grasses and forbs, and spaces to establish seedlings or new vegetative growth; an absence of dense canopy vegetation; and undisturbed subsoils.

(ii) The presence of insect outcrossing pollinators, such as *Bombus mixtus* and *B. californicus,* with unrestricted movement between existing lupine patches.

(3) Critical habitat does not include man-made structures (such as buildings, aqueducts, airports, roads, and other paved areas, and the land on which such structures are located) existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical Habitat Map Units.* Critical habitat units are described below. Data layers defining map units were created using USGS 24,000 scale Digital Ortho Quads captured in 2000. Critical habitat units were then mapped using UTM zone 10, NAD 1983 coordinates.

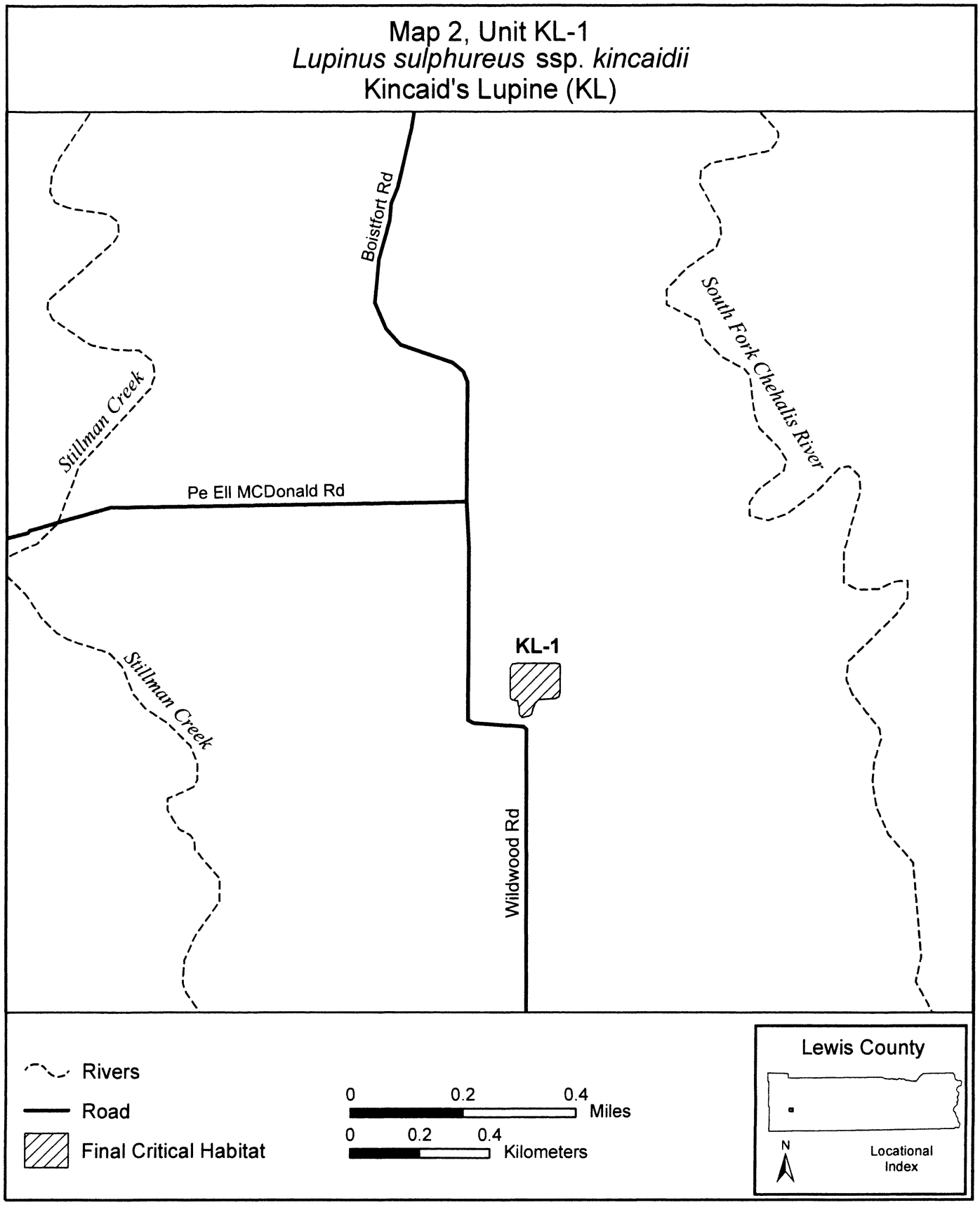
(5) Note: Map 1 (Index map for *Lupinus sulphureus* ssp. *kincaidii*) follows:


Map 1, Index Map
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Pacific
Lewis
Cowlitz
Skamania
Clatsop
Columbia
Clark
Washington
Oregon
Tillamook
Washington
Multnomah
Hood River
Yamhill
Clackmas
Polk
Marion
Lincoln
Linn
Benton
Lane
Coos
Douglas
PACIFIC OCEAN
KL-1
KL-2
KL-3
KL-4
KL-5
KL-6
KL-7
KL-8
KL-9
KL-10
KL-11
KL-12
KL-13
County Boundary
Final Critical Habitat
0 40 80 Miles
0 40 80 Kilometers
Oregon, Washington
Locational Index
N

(6) Unit 1 for *Lupinus sulphureus* ssp. *kincaidii* (KL–1), Lewis County, Washington.

(i) Unit 1 (KL–1): 490109, 5152126; 490102, 5152121; 490098, 5152121; 490084, 5152118; 490080, 5152122; 490076, 5152130; 490076, 5152146; 490073, 5152152; 490073, 5152156; 490072, 5152164; 490056, 5152167; 490051, 5152171; 490050, 5152178; 490050, 5152196; 490050, 5152257; 490056, 5152268; 490072, 5152271; 490180, 5152271; 490189, 5152268; 490192, 5152263; 490192, 5152189; 490188, 5152176; 490177, 5152171; 490165, 5152171; 490131, 5152168; 490124, 5152161; 490121, 5152160; 490119, 5152148; 490115, 5152144; 490114, 5152137; 490109, 5152126.

(ii) Note: Map 2 (Unit 1 of *Lupinus sulphureus* ssp. *kincaidii* (KL–1)) follows:

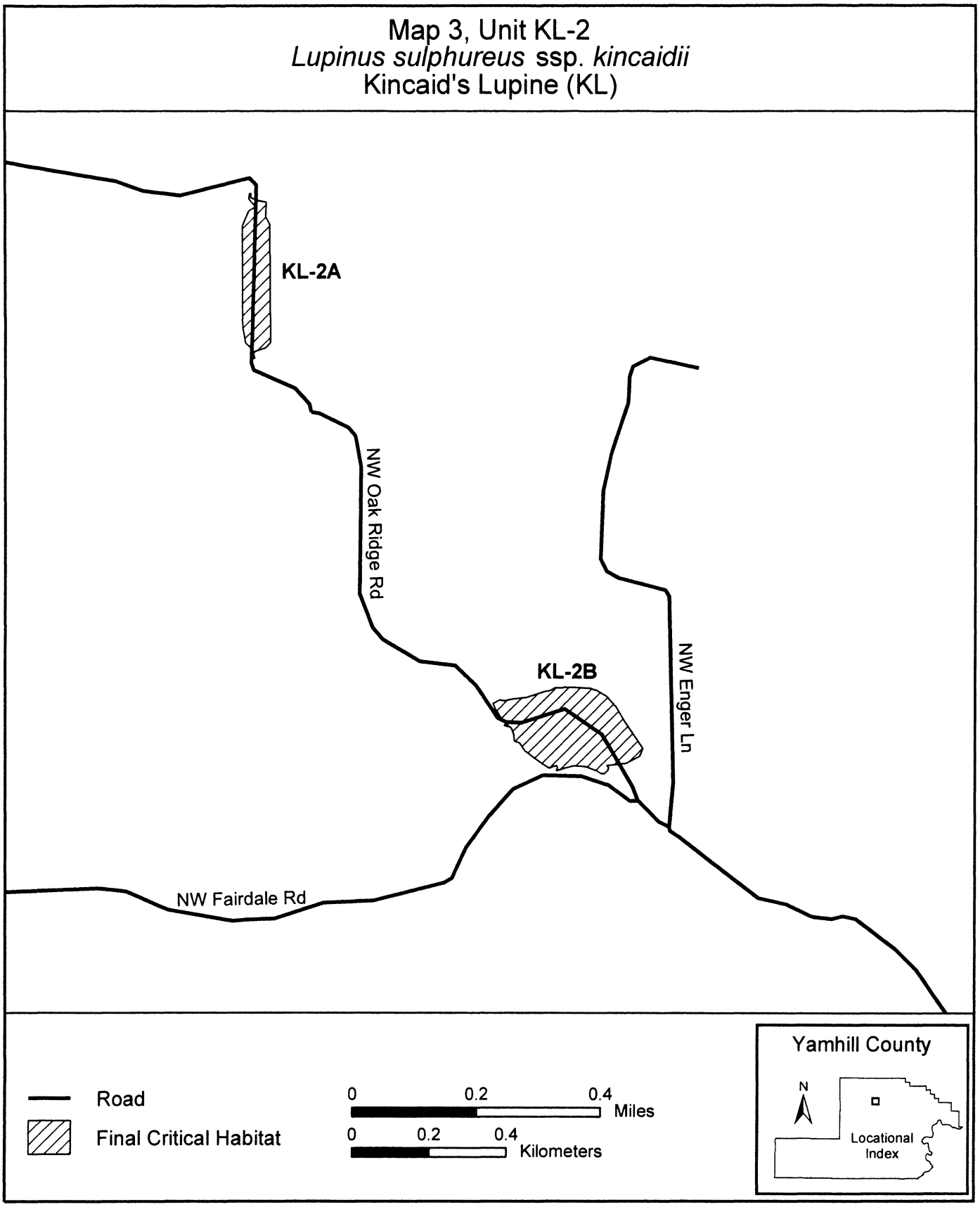

Map 2, Unit KL-1
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Boistfort Rd
South Fork Chehalis River
Stillman Creek
Pe Ell MCDonald Rd
KL-1
Stillman Creek
Wildwood Rd
Rivers
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Lewis County
N
Locational Index

(7) Unit 2 for *Lupinus sulphureus* ssp. *kincaidii* (KL–2) Yamhill County, Oregon.

(i) Unit 2A (KL–2A): 477069, 5022493; 477070, 5022487; 477067, 5022487; 477065, 5022493; 477063, 5022498; 477063, 5022510; 477046, 5022526; 477039, 5022566; 477039, 5022576; 477038, 5022585; 477039, 5022591; 477039, 5022824; 477055, 5022862; 477073, 5022873; 477056, 5022893; 477056, 5022901; 477057, 5022907; 477061, 5022907; 477060, 5022896; 477081, 5022888; 477101, 5022884; 477099, 5022848; 477110, 5022829; 477111, 5022528; 477098, 5022513; 477069, 5022504; 477067, 5022498; 477069, 5022493.

(ii) Unit 2B (KL–2B): 477876, 5021643; 477881, 5021641; 477902, 5021642; 477941, 5021640; 477957, 5021634; 477983, 5021620; 478008, 5021592; 478031, 5021554; 478078, 5021484; 478068, 5021464; 478035, 5021445; 477996, 5021442; 477983, 5021440; 477989, 5021435; 477986, 5021427; 477979, 5021419; 477968, 5021420; 477956, 5021427; 477931, 5021437; 477898, 5021440; 477878, 5021434; 477854, 5021427; 477857, 5021435; 477855, 5021439; 477846, 5021438; 477836, 5021433; 477812, 5021449; 477790, 5021465; 477773, 5021478; 477759, 5021499; 477745, 5021504; 477743, 5021519; 477744, 5021519; 477737, 5021537; 477732, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477730, 5021541; 477730, 5021541; 477729, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477725, 5021543; 477724, 5021543; 477724, 5021543; 477724, 5021543; 477724, 5021543; 477723, 5021543; 477723, 5021543; 477723, 5021543; 477722, 5021543; 477722, 5021544; 477721, 5021544; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477720, 5021545; 477720, 5021545; 477720, 5021545; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477724, 5021545; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477727, 5021543; 477728, 5021543; 477729, 5021543; 477715, 5021554; 477698, 5021582; 477695, 5021586; 477695, 5021589; 477690, 5021600; 477691, 5021601; 477707, 5021609; 477719, 5021607; 477739, 5021612; 477777, 5021616; 477823, 5021631; 477839, 5021635; 477849, 5021641; 477867, 5021641; 477876, 5021643.

(iii) Note: Map 3 (Unit 2 for *Lupinus sulphureus* ssp. *kincaidii* (KL–2)) follows:


Map 3, Unit KL-2
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
KL-2A
NW Oak Ridge Rd
KL-2B
NW Enger Ln
NW Fairdale Rd
Road
Final Critical Habitat
0 0.2 0.4 Miles
0 0.2 0.4 Kilometers
Yamhill County
N
Locational Index

(8) Units 3 and 4 for *Lupinus sulphureus* ssp. *kincaidii* (KL–3 and KL–4), Yamhill County, Oregon.

(i) Unit 3 (KL–3): 470959, 5003231; 470965, 5003226; 470972, 5003226; 470984, 5003224; 470992, 5003223; 471004, 5003220; 471012, 5003218; 471016, 5003215; 471018, 5003209; 471014, 5003202; 471011, 5003200; 471006, 5003198; 470998, 5003191; 470991, 5003187; 470988, 5003186; 470981, 5003180; 470977, 5003176; 470973, 5003168; 470970, 5003165; 470968, 5003159; 470968, 5003151; 470968, 5003132; 470968, 5003123; 470967, 5003109; 470965, 5003099; 470962, 5003090; 470961, 5003075; 470965, 5003070; 470966, 5003065; 470967, 5003055; 470965, 5003048; 470969, 5003041; 470974, 5003036; 470979, 5003036; 470984, 5003035; 470986, 5003035; 470990, 5003032; 470995, 5003027; 470998, 5003022; 470998, 5003015; 470998, 5003010; 470994, 5003007; 470988, 5003006; 470977, 5003006; 470973, 5003006; 470963, 5003004; 470957, 5003001; 470949, 5002996; 470947, 5002994; 470945, 5002987; 470944, 5002981; 470946, 5002976; 470949, 5002967; 470958, 5002964; 470965, 5002964; 470973, 5002962; 470981, 5002958; 470988, 5002955; 470994, 5002951; 470999, 5002946; 471004, 5002937; 471005, 5002932; 471010, 5002924; 471012, 5002918; 471010, 5002913; 471011, 5002902; 471003, 5002893; 470992, 5002886; 470982, 5002892; 470966, 5002893; 470956, 5002901; 470945, 5002909; 470932, 5002914; 470925, 5002911; 470914, 5002904; 470905, 5002901; 470893, 5002900; 470876, 5002901; 470868, 5002895; 470867, 5002887; 470879, 5002867; 470888, 5002866; 470935, 5002861; 470970, 5002859; 470988, 5002861; 470991, 5002853; 470998, 5002837; 471002, 5002828; 471012, 5002821; 471016, 5002816; 471015, 5002796; 471017, 5002785; 471017, 5002776; 471016, 5002766; 471015, 5002751; 471014, 5002740; 471012, 5002737; 471008, 5002734; 470998, 5002731; 470988, 5002734; 470981, 5002737; 470975, 5002739; 470967, 5002744; 470959, 5002745; 470951, 5002747; 470943, 5002747; 470929, 5002745; 470924, 5002744; 470917, 5002740; 470908, 5002741; 470894, 5002743; 470884, 5002741; 470878, 5002739; 470871, 5002737; 470865, 5002735; 470861, 5002735; 470853, 5002735; 470843, 5002736; 470834, 5002737; 470826, 5002742; 470819, 5002745; 470814, 5002751; 470811, 5002758; 470811, 5002764; 470809, 5002774; 470805, 5002784; 470801, 5002791; 470797, 5002795; 470787, 5002802; 470780, 5002802; 470772, 5002802; 470760, 5002805; 470752, 5002811; 470750, 5002818; 470747, 5002830; 470746, 5002840; 470744, 5002861; 470743, 5002874; 470740, 5002886; 470738, 5002896; 470735, 5002904; 470731, 5002910; 470729, 5002911; 470716, 5002892; 470717, 5002872; 470704, 5002848; 470692, 5002827; 470696, 5002824; 470691, 5002816; 470690, 5002804; 470692, 5002800; 470703, 5002799; 470698, 5002794; 470700, 5002783; 470695, 5002776; 470691, 5002769; 470690, 5002762; 470695, 5002753; 470682, 5002753; 470682, 5002723; 470692, 5002723; 470689, 5002717; 470691, 5002709; 470694, 5002702; 470684, 5002700; 470675, 5002699; 470665, 5002704; 470657, 5002701; 470651, 5002704; 470645, 5002701; 470640, 5002694; 470623, 5002696; 470617, 5002697; 470608, 5002697; 470604, 5002707; 470589, 5002716; 470582, 5002715; 470580, 5002725; 470564, 5002726; 470563, 5002707; 470555, 5002695; 470553, 5002676; 470548, 5002670; 470553, 5002660; 470562, 5002655; 470562, 5002646; 470557, 5002635; 470564, 5002625; 470557, 5002608; 470514, 5002689; 470514, 5002732; 470561, 5002844; 470604, 5002950; 470685, 5003149; 470688, 5003164; 470693, 5003185; 470725, 5003387; 470725, 5003399; 470728, 5003400; 470728, 5003406; 470733, 5003407; 470738, 5003441; 470741, 5003444; 470749, 5003447; 470755, 5003446; 470764, 5003444; 470769, 5003441; 470775, 5003430; 470778, 5003422; 470780, 5003416; 470782, 5003411; 470787, 5003400; 470790, 5003393; 470794, 5003387; 470797, 5003383; 470810, 5003372; 470817, 5003367; 470829, 5003362; 470836, 5003356; 470841, 5003352; 470852, 5003349; 470856, 5003345; 470858, 5003343; 470869, 5003337; 470878, 5003335; 470891, 5003328; 470895, 5003325; 470901, 5003320; 470914, 5003313; 470925, 5003301; 470930, 5003295; 470937, 5003286; 470945, 5003282; 470948, 5003277; 470948, 5003271; 470948, 5003260; 470951, 5003247; 470955, 5003235; 470959, 5003231.

(ii) Unit 4A (KL–4A) exterior unit perimeter: 474615, 5001190; 474619, 5001179; 474629, 5001179; 474633, 5001187; 474643, 5001191; 474649, 5001180; 474661, 5001182; 474660, 5001194; 474661, 5001204; 474674, 5001202; 474684, 5001197; 474697, 5001197; 474693, 5001208; 474683, 5001213; 474676, 5001218; 474679, 5001222; 474681, 5001232; 474673, 5001237; 474677, 5001244; 474686, 5001234; 474694, 5001233; 474700, 5001239; 474709, 5001240; 474722, 5001247; 474727, 5001252; 474743, 5001250; 474760, 5001248; 474768, 5001255; 474770, 5001243; 474782, 5001241; 474794, 5001243; 474801, 5001241; 474816, 5001244; 474827, 5001245; 474831, 5001243; 474841, 5001243; 474853, 5001237; 474867, 5001233; 474886, 5001233; 474900, 5001233; 474917, 5001224; 474923, 5001216; 474924, 5001203; 474924, 5001193; 474929, 5001179; 474931, 5001171; 474935, 5001159; 474936, 5001145; 474938, 5001124; 474932, 5001106; 474902, 5000968; 474883, 5000970; 474853, 5000972; 474815, 5000967; 474779, 5000957; 474730, 5000946; 474664, 5000938; 474644, 5000919; 474624, 5000912; 474602, 5000904; 474581, 5000888; 474553, 5000899; 474534, 5000933; 474522, 5000977; 474511, 5001003; 474499, 5001009; 474486, 5001007; 474476, 5000992; 474456, 5000976; 474440, 5000953; 474425, 5000935; 474421, 5000908; 474422, 5000885; 474424, 5000859; 474433, 5000844; 474444, 5000833; 474445, 5000820; 474428, 5000811; 474394, 5000796; 474367, 5000773; 474349, 5000754; 474340, 5000730; 474343, 5000710; 474351, 5000695; 474355, 5000680; 474358, 5000663; 474367, 5000633; 474373, 5000611; 474377, 5000592; 474364, 5000563; 474353, 5000570; 474339, 5000588; 474332, 5000595; 474325, 5000590; 474325, 5000578; 474323, 5000560; 474323, 5000544; 474328, 5000535; 474332, 5000526; 474324, 5000515; 474317, 5000501; 474333, 5000502; 474333, 5000495; 474339, 5000481; 474337, 5000457; 474329, 5000427; 474318, 5000400; 474316, 5000387; 474329, 5000373; 474361, 5000353; 474372, 5000340; 474379, 5000320; 474381, 5000302; 474369, 5000286; 474360, 5000283; 474352, 5000280; 474345, 5000275; 474342, 5000271; 474334, 5000256; 474333, 5000234; 474324, 5000206; 474320, 5000159; 474320, 5000133; 474329, 5000094; 474339, 5000068; 474325, 5000064; 474320, 5000070; 474312, 5000070; 474311, 5000064; 474300, 5000057; 474282, 5000050; 474270, 5000046; 474267, 5000055; 474260, 5000056; 474256, 5000051; 474251, 5000055; 474247, 5000059; 474237, 5000061; 474230, 5000068; 474230, 5000079; 474229, 5000089; 474231, 5000094; 474229, 5000099; 474231, 5000108; 474231, 5000123; 474230, 5000155; 474233, 5000175; 474238, 5000186; 474234, 5000193; 474241, 5000196;

474248, 5000197; 474251, 5000208; 474251, 5000218; 474246, 5000234; 474238, 5000244; 474224, 5000261; 474211, 5000273; 474199, 5000278;

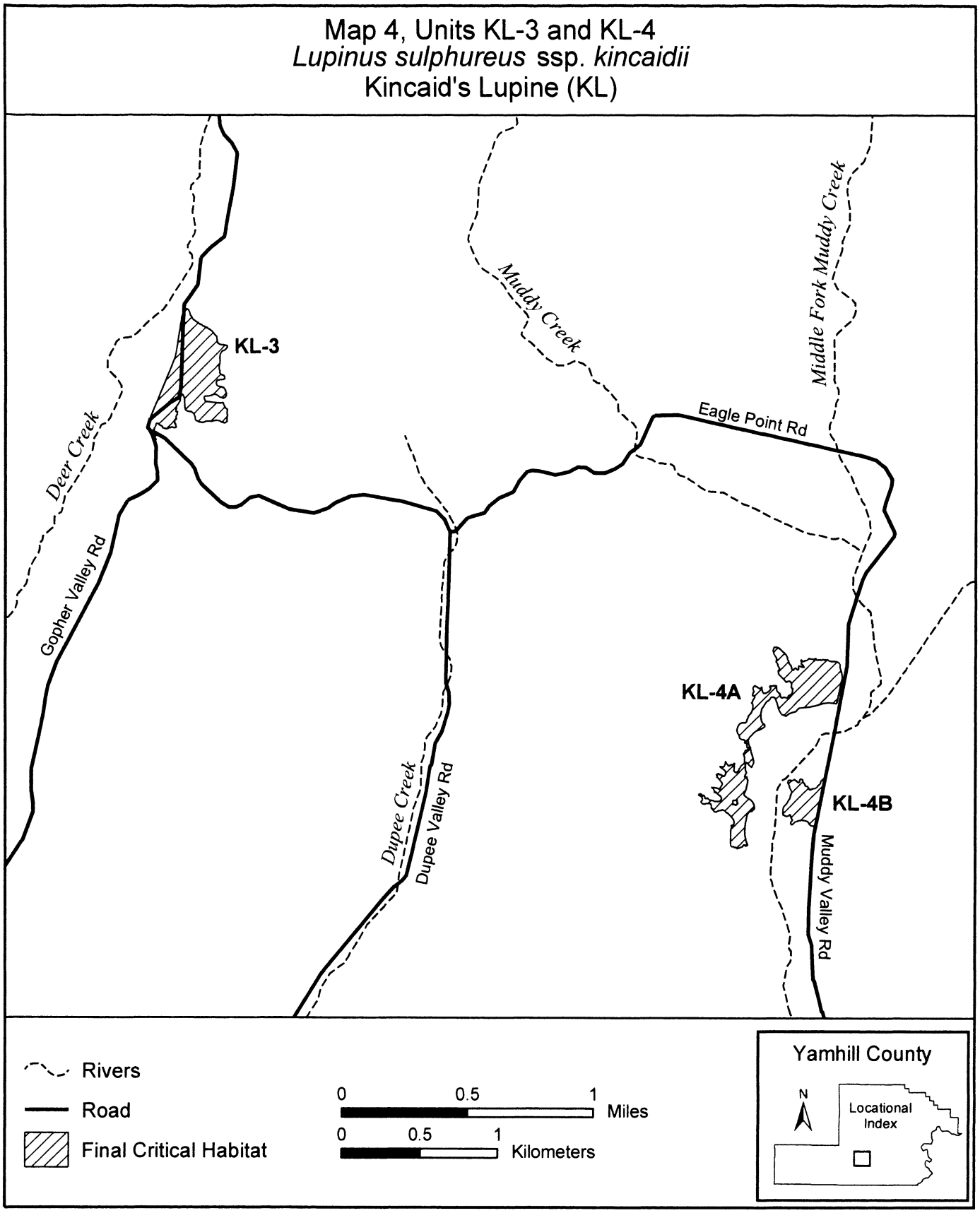
474193, 5000286; 474182, 5000290; 474176, 5000294; 474170, 5000289; 474150, 5000285; 474143, 5000280; 474133, 5000279; 474125, 5000281; 474118, 5000291; 474115, 5000301; 474109, 5000298; 474108, 5000308; 474108, 5000316; 474105, 5000328; 474097, 5000332; 474086, 5000333; 474076, 5000332; 474062, 5000328; 474051, 5000331; 474041, 5000341; 474043, 5000346; 474051, 5000352; 474050, 5000364; 474043, 5000376; 474038, 5000378; 474032, 5000381; 474025, 5000387; 474029, 5000391; 474042, 5000393; 474043, 5000388; 474049, 5000383; 474055, 5000383; 474060, 5000383; 474066, 5000376; 474067, 5000368; 474072, 5000363; 474077, 5000366; 474084, 5000367; 474088, 5000361; 474091, 5000357; 474101, 5000355; 474106, 5000351; 474117, 5000352; 474121, 5000348; 474128, 5000345; 474141, 5000347; 474152, 5000345; 474165, 5000349; 474172, 5000355; 474173, 5000362; 474171, 5000374; 474166, 5000381; 474155, 5000386; 474146, 5000393; 474140, 5000404; 474136, 5000397; 474133, 5000406; 474124, 5000402; 474126, 5000408; 474125, 5000416; 474121, 5000425; 474107, 5000436; 474119, 5000434; 474130, 5000434; 474144, 5000431; 474156, 5000425; 474167, 5000419; 474165, 5000431; 474172, 5000438; 474178, 5000454; 474176, 5000465; 474166, 5000478; 474154, 5000489; 474149, 5000497; 474142, 5000500; 474146, 5000512; 474137, 5000519; 474149, 5000520; 474151, 5000527; 474161, 5000515; 474167, 5000518; 474177, 5000509; 474188, 5000505; 474196, 5000515; 474198, 5000525; 474196, 5000538; 474186, 5000546; 474177, 5000555; 474161, 5000569; 474174, 5000565; 474186, 5000565; 474191, 5000577; 474193, 5000588; 474196, 5000603; 474200, 5000592; 474212, 5000579; 474214, 5000572; 474217, 5000571; 474228, 5000577; 474233, 5000580; 474243, 5000578; 474248, 5000583; 474252, 5000589; 474258, 5000586; 474253, 5000580; 474251, 5000569; 474250, 5000540; 474265, 5000528; 474280, 5000540; 474281, 5000546; 474284, 5000555; 474289, 5000559; 474297, 5000572; 474311, 5000580; 474318, 5000592; 474318, 5000606; 474318, 5000618; 474319, 5000628; 474314, 5000643; 474311, 5000650; 474318, 5000654; 474320, 5000666; 474328, 5000674; 474335, 5000673; 474347, 5000679; 474349, 5000688; 474337, 5000690; 474333, 5000690; 474334, 5000699; 474331, 5000711; 474329, 5000720; 474319, 5000717; 474321, 5000732; 474313, 5000740; 474303, 5000740; 474287, 5000747; 474283, 5000759; 474281, 5000771; 474274, 5000782; 474268, 5000799; 474276, 5000823; 474285, 5000838; 474301, 5000846; 474312, 5000846; 474323, 5000844; 474331, 5000852; 474337, 5000867; 474338, 5000877; 474344, 5000891; 474357, 5000905; 474362, 5000914; 474367, 5000929; 474370, 5000942; 474372, 5000958; 474369, 5000964; 474361, 5000970; 474369, 5000979; 474370, 5000992; 474380, 5000999; 474384, 5001010; 474375, 5001017; 474368, 5001018; 474370, 5001033; 474378, 5001044; 474374, 5001054; 474372, 5001064; 474376, 5001076; 474383, 5001080; 474393, 5001074; 474401, 5001068; 474413, 5001063; 474421, 5001066; 474425, 5001075; 474427, 5001066; 474430, 5001055; 474433, 5001041; 474438, 5001032; 474456, 5001034; 474467, 5001041; 474477, 5001051; 474485, 5001061; 474477, 5001073; 474482, 5001080; 474486, 5001073; 474493, 5001078; 474501, 5001080; 474507, 5001082; 474520, 5001079; 474519, 5001069; 474522, 5001052; 474526, 5001043; 474536, 5001033; 474542, 5001030; 474545, 5001013; 474551, 5001003; 474566, 5001009; 474571, 5001008; 474586, 5001003; 474594, 5001008; 474595, 5001017; 474610, 5001024; 474617, 5001032; 474622, 5001049; 474624, 5001062; 474616, 5001062; 474613, 5001072; 474616, 5001089; 474610, 5001103; 474599, 5001110; 474591, 5001108; 474581, 5001102; 474574, 5001112; 474537, 5001149; 474531, 5001163; 474531, 5001174; 474540, 5001186; 474536, 5001194; 474526, 5001210; 474531, 5001213; 474524, 5001221; 474516, 5001231; 474521, 5001252; 474510, 5001269; 474501, 5001283; 474496, 5001300; 474499, 5001313; 474506, 5001324; 474529, 5001320; 474539, 5001315; 474549, 5001303; 474552, 5001299; 474571, 5001286; 474582, 5001273; 474588, 5001262; 474589, 5001247; 474594, 5001238; 474596, 5001231; 474599, 5001220; 474604, 5001213; 474610, 5001208; 474614, 5001200; 474615, 5001190;

(iii) Unit 4A (KL–4A) interior unit perimeter: 474245, 5000351; 474242, 5000325; 474250, 5000328; 474258, 5000327; 474263, 5000317; 474270, 5000328; 474280, 5000332; 474272, 5000343; 474274, 5000358; 474266, 5000354; 474252, 5000352; 474245, 5000351.

(iv) Unit 4B (KL–4B): 474825, 5000448; 474804, 5000350; 474787, 5000258; 474783, 5000230; 474782, 5000217; 474779, 5000202; 474772, 5000193; 474754, 5000191; 474739, 5000194; 474729, 5000204; 474723, 5000215; 474716, 5000222; 474702, 5000226; 474685, 5000227; 474669, 5000226; 474658, 5000223; 474640, 5000215; 474629, 5000204; 474621, 5000199; 474613, 5000202; 474609, 5000211; 474612, 5000218; 474617, 5000220; 474623, 5000229; 474615, 5000239; 474610, 5000255; 474610, 5000260; 474607, 5000264; 474598, 5000254; 474589, 5000252; 474580, 5000254; 474563, 5000263; 474564, 5000279; 474562, 5000290; 474566, 5000307; 474570, 5000316; 474581, 5000328; 474590, 5000336; 474598, 5000349; 474605, 5000362; 474611, 5000383; 474616, 5000399; 474618, 5000406; 474614, 5000417; 474604, 5000433; 474603, 5000446; 474597, 5000456; 474592, 5000468; 474596, 5000479; 474607, 5000481; 474619, 5000477; 474628, 5000481; 474638, 5000487; 474643, 5000478; 474647, 5000476; 474660, 5000464; 474667, 5000467; 474669, 5000479; 474671, 5000487; 474677, 5000489; 474687, 5000487; 474693, 5000469; 474698, 5000460; 474705, 5000445; 474719, 5000441; 474728, 5000430; 474731, 5000421; 474741, 5000424; 474751, 5000429; 474766, 5000430; 474779, 5000437; 474785, 5000445; 474792, 5000450; 474801, 5000456; 474803, 5000472; 474813, 5000483; 474823, 5000490; 474830, 5000485; 474830, 5000467; 474825, 5000448.

(v) Note: Map 4 (Units 3 and 4 for *Lupinus sulphureus* ssp. *kincaidii* (KL–3 and KL–4)) follows:

BILLING CODE 4310–55–P



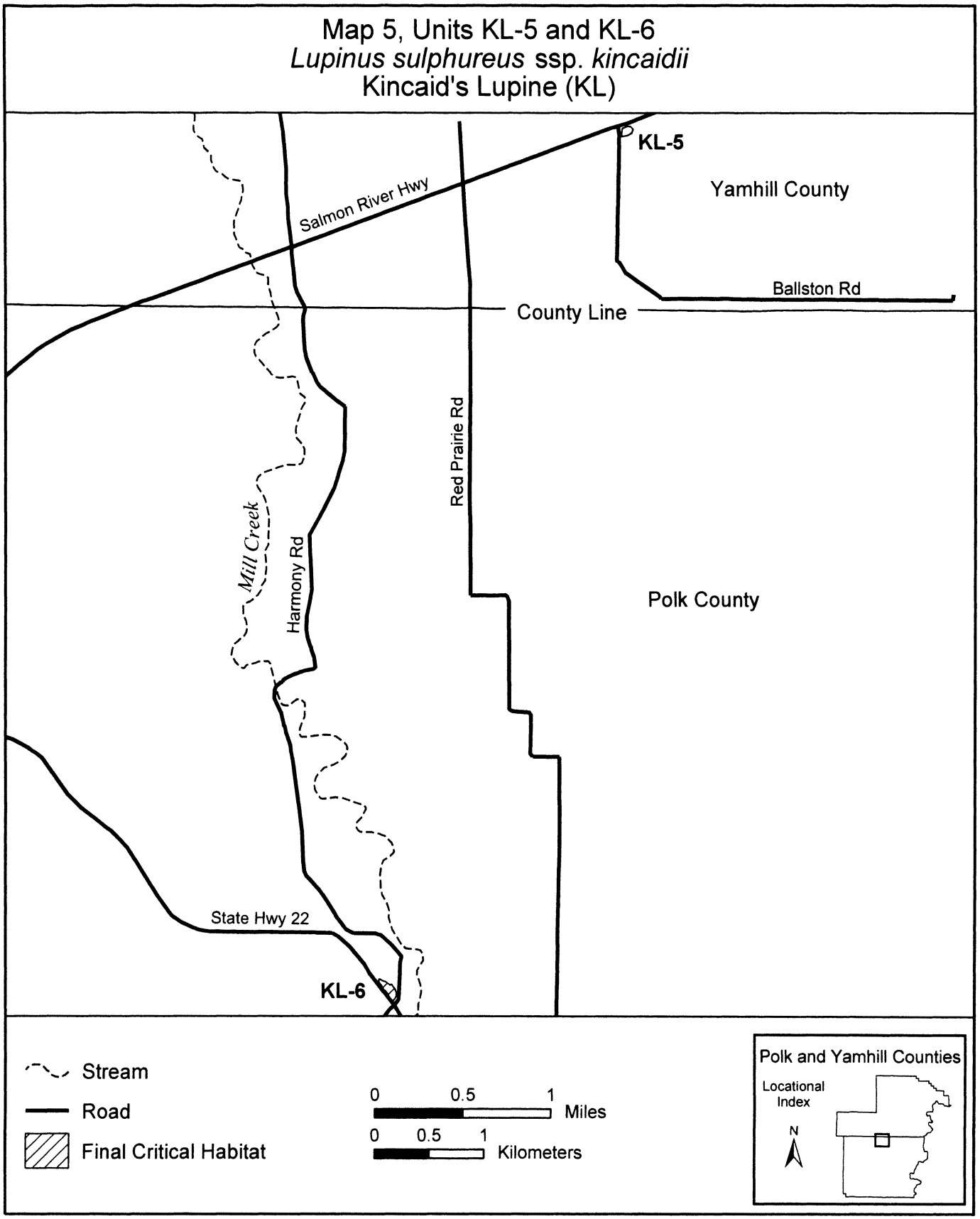
BILLING CODE 4310–55–C

(9) Units 5 and 6 for *Lupinus sulphureus* ssp. *kincaidii* (KL–5 and KL–6): Yamhill and Polk Counties, Oregon.

(i) Unit 5 (KL–5): 468949, 4992915; 468897, 4992904; 468904, 4992979; 468953, 4992996; 468981, 4992995; 469003, 4992969; 468989, 4992935; 468949, 4992915.

(ii) Unit 6 (KL–6): 466744, 4985295; 466788, 4985264; 466788, 4985266; 466788, 4985267; 466788, 4985268; 466789, 4985269; 466789, 4985270; 466790, 4985271; 466791, 4985272; 466792, 4985273; 466793, 4985273; 466795, 4985273; 466796, 4985274; 466797, 4985273; 466798, 4985273; 466800, 4985272; 466800, 4985272; 466801, 4985271; 466802, 4985270; 466802, 4985269; 466803, 4985267; 466803, 4985266; 466803, 4985265; 466802, 4985264; 466805, 4985263; 466814, 4985246; 466828, 4985234; 466834, 4985222; 466841, 4985196; 466839, 4985170; 466828, 4985145; 466814, 4985129; 466805, 4985129; 466783, 4985143; 466767, 4985178; 466742, 4985216; 466725, 4985214; 466725, 4985212; 466721, 4985211; 466718, 4985210; 466715, 4985211; 466711, 4985212; 466707, 4985213; 466700, 4985220; 466694, 4985237; 466694, 4985239; 466694, 4985241; 466696, 4985243; 466710, 4985258; 466681, 4985295; 466683, 4985320; 466691, 4985320; 466712, 4985309; 466744, 4985295.

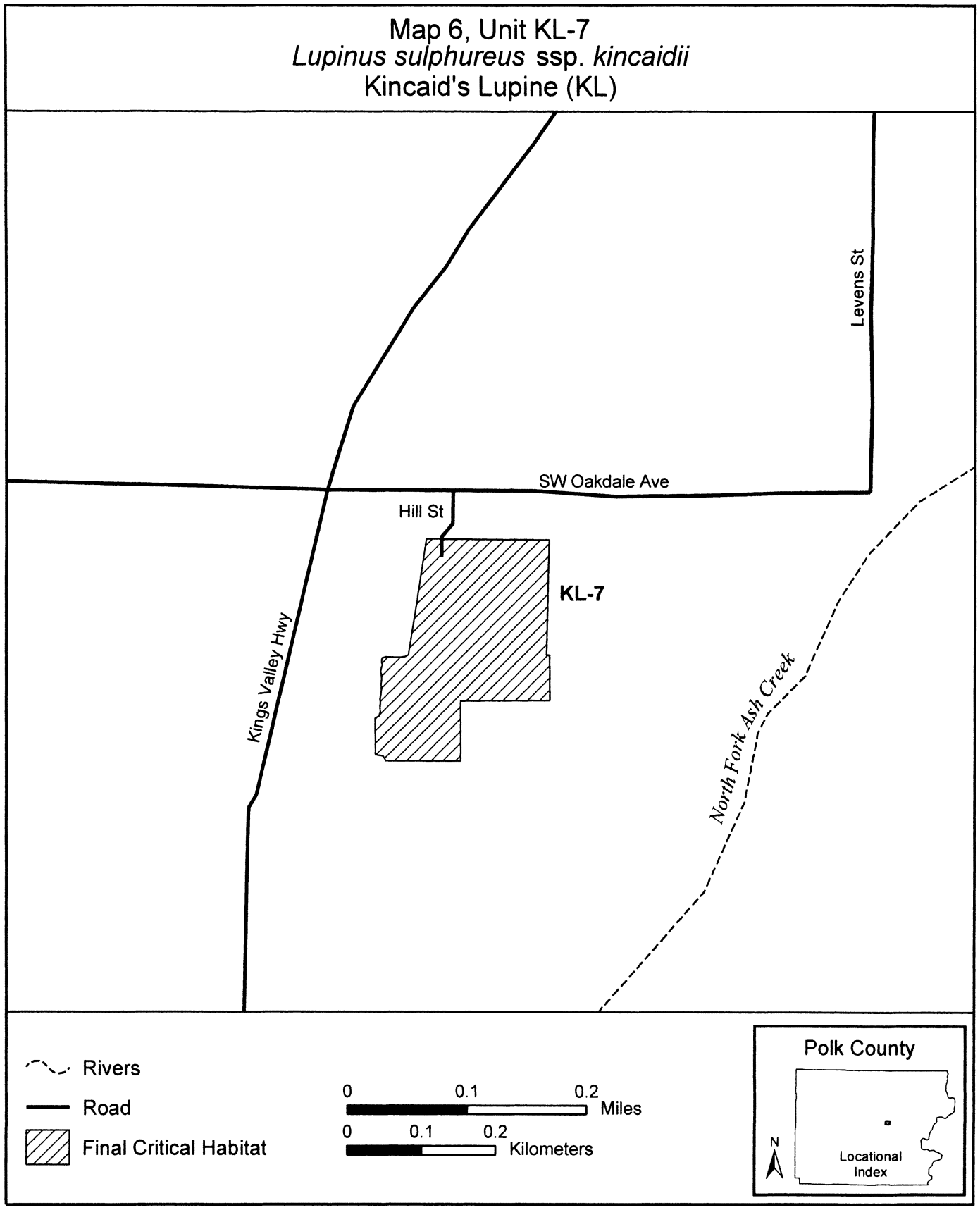
(iii) Note: Map 5 (Units 5 and 6 for *Lupinus sulphureus* ssp. *kincaidii* (KL–5 and KL–6)) follows:


Map 5, Units KL-5 and KL-6
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
KL-5
Yamhill County
Salmon River Hwy
Ballston Rd
County Line
Red Prairie Rd
Mill Creek
Harmony Rd
Polk County
State Hwy 22
KL-6
Stream
Road
Final Critical Habitat
0 0.5 1 Miles
0 0.5 1 Kilometers
Polk and Yamhill Counties
Locational Index
N

(10) Unit 7 for *Lupinus sulphureus* ssp. *kincaidii* (KL–7), Polk County, Oregon.

(i) Unit 7 (KL–7): 474272, 4973321; 474269, 4973168; 474273, 4973168; 474274, 4973107; 474153, 4973107; 474153, 4973026; 474053, 4973026; 474051, 4973029; 474049, 4973032; 474047, 4973034; 474042, 4973034; 474039, 4973035; 474038, 4973084; 474044, 4973086; 474045, 4973092; 474045, 4973097; 474045, 4973104; 474045, 4973109; 474046, 4973116; 474047, 4973121; 474046, 4973128; 474047, 4973134; 474047, 4973139; 474046, 4973146; 474047, 4973152; 474048, 4973154; 474047, 4973158; 474048, 4973164; 474049, 4973164; 474052, 4973165; 474054, 4973165; 474061, 4973165; 474067, 4973165; 474074, 4973165; 474079, 4973166; 474083, 4973168; 474098, 4973263; 474107, 4973322; 474272, 4973321.

(ii) Note: Map 6 (Unit 7 for *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–7)) follows:


Map 6, Unit KL-7
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Levens St
SW Oakdale Ave
Hill St
KL-7
Kings Valley Hwy
North Fork Ash Creek
Rivers
Road
Final Critical Habitat
0 0.1 0.2 Miles
0 0.1 0.2 Kilometers
Polk County
N
Locational Index

(11) Units 8, 9, and 10 for *Lupinus sulphureus* ssp. *kincaidii* (KL–8, KL–9, and KL–10), Benton County, Oregon.

(i) Unit 8 (KL–8): 472041, 4940614; 472041, 4940616; 472040, 4940619; 472041, 4940623; 472043, 4940628; 472043, 4940632; 472043, 4940636; 472043, 4940639; 472045, 4940641; 472047, 4940642; 472048, 4940642; 472051, 4940646; 472051, 4940651; 472051, 4940655; 472051, 4940658; 472051, 4940660; 472050, 4940665; 472053, 4940667; 472057, 4940668; 472060, 4940670; 472063, 4940668; 472066, 4940668; 472070, 4940667; 472070, 4940663; 472073, 4940660; 472078, 4940658; 472080, 4940661; 472083, 4940662; 472087, 4940663; 472090, 4940662; 472092, 4940663; 472095, 4940664; 472100, 4940664; 472104, 4940663; 472106, 4940661; 472107, 4940659; 472109, 4940656; 472113, 4940654; 472115, 4940653; 472115, 4940650; 472117, 4940648; 472120, 4940647; 472121, 4940645; 472121, 4940641; 472122, 4940640; 472123, 4940636; 472124, 4940633; 472121, 4940632; 472116, 4940631; 472114, 4940629; 472112, 4940626; 472110, 4940622; 472110, 4940618; 472109, 4940613; 472108, 4940609; 472104, 4940605; 472102, 4940599; 472103, 4940594; 472104, 4940590; 472105, 4940586; 472105, 4940586; 472104, 4940582; 472100, 4940579; 472093, 4940558; 472089, 4940535; 472102, 4940527; 472103, 4940510; 472115, 4940498; 472124, 4940503; 472127, 4940510; 472139, 4940515; 472141, 4940507; 472138, 4940499; 472146, 4940494; 472164, 4940503; 472202, 4940512; 472206, 4940531; 472188, 4940534; 472187, 4940543; 472200, 4940547; 472206, 4940555; 472202, 4940572; 472218, 4940570; 472251, 4940569; 472260, 4940564; 472276, 4940554; 472282, 4940544; 472285, 4940531; 472293, 4940519; 472286, 4940510; 472283, 4940499; 472297, 4940500; 472300, 4940495; 472311, 4940488; 472311, 4940478; 472320, 4940474; 472338, 4940465; 472348, 4940472; 472357, 4940472; 472362, 4940461; 472368, 4940442; 472375, 4940417; 472375, 4940401; 472375, 4940393; 472376, 4940386; 472381, 4940384; 472384, 4940372; 472392, 4940365; 472407, 4940365; 472417, 4940360; 472431, 4940353; 472442, 4940342; 472442, 4940330; 472448, 4940313; 472451, 4940311; 472434, 4940281; 472417, 4940275; 472391, 4940279; 472389, 4940288; 472373, 4940293; 472366, 4940287; 472355, 4940295; 472355, 4940315; 472332, 4940334; 472332, 4940335; 472330, 4940336; 472301, 4940344; 472299, 4940360; 472299, 4940361; 472311, 4940365; 472327, 4940351; 472329, 4940349; 472342, 4940348; 472343, 4940367; 472356, 4940366; 472367, 4940381; 472367, 4940397; 472363, 4940405; 472338, 4940405; 472319, 4940428; 472305, 4940430; 472296, 4940445; 472281, 4940449; 472273, 4940443; 472273, 4940443; 472251, 4940425; 472164, 4940437; 472163, 4940436; 472159, 4940437; 472152, 4940450; 472136, 4940452; 472113, 4940447; 472102, 4940421; 472101, 4940419; 472071, 4940414; 472042, 4940422; 472034, 4940405; 472014, 4940407; 472014, 4940392; 472010, 4940384; 471999, 4940374; 471994, 4940367; 471993, 4940345; 471971, 4940342; 471946, 4940345; 471939, 4940342; 471939, 4940329; 471938, 4940303; 471930, 4940288; 471928, 4940269; 471917, 4940269; 471905, 4940275; 471902, 4940293; 471910, 4940305; 471919, 4940326; 471922, 4940338; 471932, 4940351; 471948, 4940354; 471966, 4940360; 471970, 4940368; 471976, 4940385; 471993, 4940398; 472001, 4940410; 472018, 4940418; 472024, 4940429; 472024, 4940445; 472026, 4940447; 472041, 4940454; 472049, 4940482; 472069, 4940490; 472078, 4940515; 472072, 4940521; 472074, 4940530; 472082, 4940534; 472085, 4940542; 472082, 4940565; 472080, 4940574; 472072, 4940583; 472072, 4940587; 472072, 4940587; 472072, 4940590; 472071, 4940592; 472071, 4940595; 472072, 4940596; 472073, 4940596; 472074, 4940597; 472079, 4940597; 472079, 4940602; 472077, 4940609; 472072, 4940612; 472070, 4940612; 472067, 4940612; 472065, 4940611; 472061, 4940613; 472056, 4940616; 472048, 4940615; 472046, 4940613; 472045, 4940612; 472045, 4940611; 472043, 4940611; 472041, 4940614; 472041, 4940614.

(ii) Unit 9 (KL–9): 467845, 4937645; 467840, 4937641; 467841, 4937621; 467850, 4937503; 467896, 4937426; 467889, 4937381; 467879, 4937358; 467844, 4937352; 467717, 4937354; 467525, 4937362; 467217, 4937372; 467186, 4937381; 467066, 4937388; 467055, 4937377; 467009, 4937373; 466961, 4937380; 466915, 4937382; 466860, 4937392; 466783, 4937400; 466746, 4937390; 466750, 4937358; 466727, 4937335; 466713, 4937308; 466667, 4937298; 466654, 4937262; 466659, 4937211; 466686, 4937130; 466701, 4937088; 466710, 4937034; 466703, 4937031; 466705, 4937011; 466705, 4936978; 466695, 4936938; 466754, 4936891; 466792, 4936884; 466800, 4936874; 466824, 4936872; 466851, 4936874; 466877, 4936883; 466901, 4936894; 466913, 4936893; 466920, 4936885; 466932, 4936902; 466948, 4936901; 466959, 4936896; 466985, 4936886; 467030, 4936878; 467052, 4936866; 467075, 4936863; 467076, 4936853; 467057, 4936837; 467040, 4936823; 467030, 4936810; 466999, 4936794; 466960, 4936800; 466949, 4936803; 466904, 4936794; 466896, 4936793; 466884, 4936799; 466874, 4936790; 466865, 4936778; 466862, 4936758; 466843, 4936740; 466824, 4936734; 466791, 4936729; 466776, 4936713; 466768, 4936726; 466742, 4936713; 466720, 4936698; 466693, 4936682; 466671, 4936695; 466657, 4936702; 466649, 4936691; 466638, 4936676; 466620, 4936676; 466610, 4936671; 466603, 4936645; 466602, 4936633; 466595, 4936605; 466596, 4936586; 466601, 4936577; 466605, 4936563; 466605, 4936539; 466601, 4936531; 466592, 4936524; 466585, 4936518; 466579, 4936517; 466575, 4936510; 466568, 4936509; 466566, 4936519; 466551, 4936516; 466546, 4936511; 466540, 4936478; 466543, 4936463; 466541, 4936425; 466536, 4936391; 466542, 4936383; 466572, 4936388; 466607, 4936392; 466634, 4936386; 466664, 4936367; 466683, 4936337; 466699, 4936302; 466689, 4936260; 466670, 4936252; 466609, 4936227; 466559, 4936227; 466532, 4936265; 466529, 4936290; 466509, 4936310; 466495, 4936359; 466486, 4936405; 466488, 4936536; 466457, 4936587; 466219, 4936726; 466211, 4936799; 466299, 4937032; 466287, 4937049; 466323, 4937128; 466333, 4937175; 466358, 4937197; 466399, 4937195; 466435, 4937164; 466474, 4937164; 466507, 4937181; 466535, 4937200; 466526, 4937239; 466535, 4937294; 466551, 4937316; 466551, 4937355; 466565, 4937408; 466585, 4937561; 466593, 4937636; 466591, 4937692; 466594, 4937690; 466621, 4937636; 466675, 4937591; 466760, 4937599; 466882, 4937574; 467011, 4937595; 467082, 4937628; 467121, 4937613; 467140, 4937586; 467171, 4937574; 467202, 4937578; 467262, 4937582; 467258, 4937667; 467270, 4937692; 467372, 4937692; 467405, 4937682; 467484, 4937688; 467513, 4937676; 467571, 4937676; 467589, 4937696; 467625, 4937705; 467643, 4937684; 467689, 4937696; 467745, 4937684; 467818, 4937692; 467834, 4937669; 467845, 4937645.

(iii) Unit 10 (KL–10): 471874, 4933617; 471875, 4933616; 471877, 4933616; 471878, 4933616; 471880, 4933616; 471881, 4933616; 471882, 4933615; 471883, 4933614; 471884, 4933613; 471884, 4933612; 471884, 4933611; 471886, 4933610; 471886, 4933609; 471887, 4933608; 471887,

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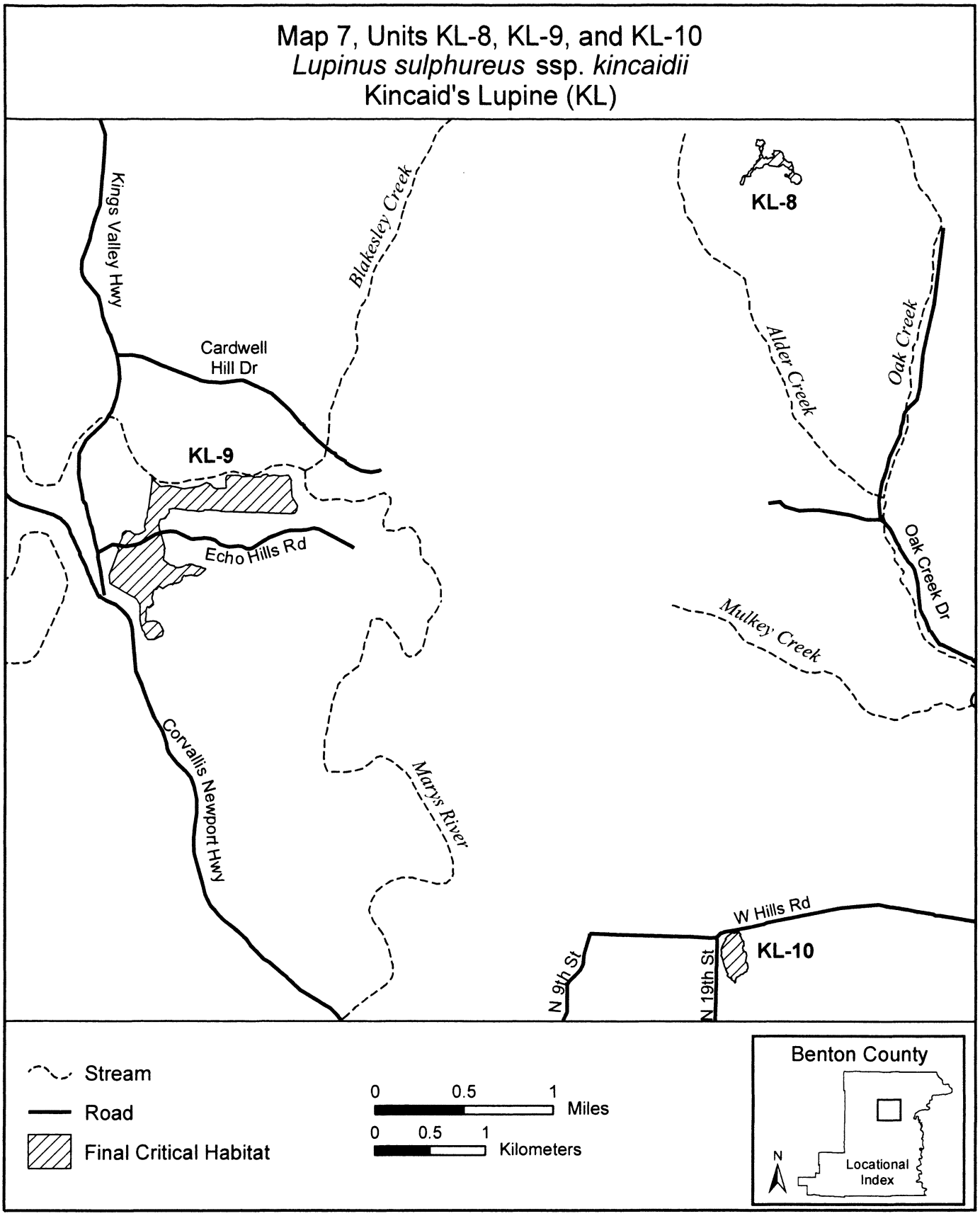
(iv) Note: Map 7 (Units 8, 9, and 10 for *Lupinus sulphureus* ssp. *kincaidii* (KL–8, KL–9, and KL–10)) follows:


Map 7, Units KL-8, KL-9, and KL-10
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Kings Valley Hwy
Blakesley Creek
KL-8
Alder Creek
Oak Creek
Cardwell Hill Dr
KL-9
Echo Hills Rd
Oak Creek Dr
Mulkey Creek
Corvallis Newport Hwy
Marys River
W Hills Rd
KL-10
N 9th St
N 19th St
Stream
Road
Final Critical Habitat
0 0.5 1 Miles
0 0.5 1 Kilometers
Benton County
N
Locational Index

BILLING CODE 4310–55–C

(12) Units 11 and 12 for *Lupinus sulphureus* ssp. *kincaidii* (KL–11 and KL–12), Lane County, Oregon.

(i) Unit 11A (KL–11A): 478559, 4883057; 478562, 4883057; 478566, 4883056; 478555, 4883049; 478551, 4883048; 478547, 4883048; 478548, 4883039; 478543, 4883035; 478539, 4883034; 478535, 4883034; 478528, 4883030; 478527, 4883024; 478526, 4883021; 478527, 4883013; 478522, 4883015; 478514, 4883014; 478508, 4883005; 478508, 4883005; 478507, 4883005; 478480, 4882999; 478454, 4882997; 478442, 4882989; 478429, 4882989; 478419, 4882997; 478419, 4882997; 478418, 4882997; 478411, 4882989; 478403, 4882979; 478397, 4882964; 478386, 4882946; 478382, 4882940; 478366, 4882933; 478352, 4882939; 478349, 4882940; 478341, 4882948; 478333, 4882956; 478333, 4882956; 478333, 4882956; 478331, 4882954; 478317, 4882944; 478296, 4882954; 478298, 4882969; 478304, 4882985; 478322, 4883013; 478329, 4883031; 478335, 4883047; 478339, 4883067; 478349, 4883088; 478361, 4883104; 478367, 4883118; 478379, 4883126; 478392, 4883133; 478403, 4883134; 478406, 4883134; 478415, 4883127; 478417, 4883117; 478417, 4883114; 478417, 4883114; 478417, 4883114; 478420, 4883108; 478422, 4883098; 478423, 4883095; 478428, 4883084; 478435, 4883079; 478441, 4883074; 478458, 4883069; 478458, 4883069; 478459, 4883069; 478484, 4883066; 478496, 4883065; 478510, 4883065; 478524, 4883065; 478536, 4883063; 478559, 4883057.

(ii) Unit 11B (KL–11B): 479010, 4883102; 479010, 4883102; 479010, 4883102; 479013, 4882998; 479012, 4882998; 479010, 4882997; 479004, 4882995; 479006, 4882987; 479013, 4882982; 479013, 4882980; 479010, 4882970; 478998, 4882966; 478962, 4882964; 478931, 4882967; 478927, 4882977; 478927, 4882977; 478926, 4882977; 478913, 4882973; 478897, 4882962; 478857, 4882952; 478838, 4882954; 478832, 4882961; 478821, 4882979; 478819, 4882982; 478819, 4882982; 478819, 4882982; 478819, 4882982; 478807, 4882981; 478794, 4882977; 478778, 4882977; 478764, 4882966; 478764, 4882966; 478764, 4882965; 478761, 4882964; 478754, 4882965; 478745, 4882963; 478740, 4882964; 478733, 4882965; 478727, 4882963; 478724, 4882966; 478718, 4882968; 478712, 4882967; 478705, 4882966; 478698, 4882964; 478695, 4882965; 478690, 4882966; 478681, 4882963; 478663, 4882963; 478648, 4882961; 478642, 4882963; 478630, 4882964; 478624, 4882966; 478624, 4882970; 478623, 4882973; 478627, 4882983; 478627, 4882984; 478625, 4882993; 478625, 4882999; 478629, 4883002; 478637, 4883001; 478640, 4883008; 478639, 4883017; 478649, 4883022; 478660, 4883025; 478664, 4883022; 478670, 4883022; 478676, 4883024; 478694, 4883032; 478697, 4883033; 478707, 4883039; 478724, 4883031; 478728, 4883021; 478730, 4883011; 478746, 4883005; 478746, 4883005; 478746, 4883005; 478766, 4883009; 478772, 4883015; 478790, 4883005; 478790, 4883005; 478790, 4883005; 478810, 4883015; 478816, 4883037; 478816, 4883053; 478814, 4883069; 478806, 4883096; 478815, 4883107; 478859, 4883108; 478880, 4883106; 478901, 4883104; 478921, 4883108; 479004, 4883110; 479010, 4883103; 479010, 4883102; 479010, 4883102.

(iii) Unit 11C (KL–11C): 479211, 4883005; 479211, 4883009; 479209, 4883033; 479209, 4883080; 479213, 4883102; 479213, 4883103; 479211, 4883128; 479213, 4883156; 479211, 4883190; 479211, 4883217; 479215, 4883247; 479211, 4883265; 479209, 4883283; 479217, 4883313; 479219, 4883337; 479239, 4883339; 479278, 4883339; 479320, 4883342; 479362, 4883342; 479389, 4883340; 479413, 4883340; 479442, 4883333; 479454, 4883325; 479444, 4883317; 479419, 4883305; 479409, 4883299; 479403, 4883279; 479397, 4883259; 479385, 4883239; 479377, 4883216; 479371, 4883204; 479373, 4883192; 479373, 4883176; 479375, 4883162; 479371, 4883148; 479361, 4883128; 479357, 4883120; 479353, 4883108; 479365, 4883104; 479365, 4883104; 479366, 4883104; 479370, 4883102; 479372, 4883091; 479372, 4883083; 479371, 4883075; 479369, 4883061; 479365, 4883041; 479361, 4883025; 479345, 4883003; 479332, 4883007; 479332, 4883007; 479331, 4883007; 479333, 4882993; 479321, 4882977; 479305, 4882968; 479282, 4882968; 479266, 4882969; 479246, 4882973; 479246, 4882973; 479246, 4882973; 479226, 4882972; 479219, 4882977; 479213, 4882991; 479211, 4883005.

(iv) Unit 11D (KL–11D): 480169, 4882164; 480159, 4882157; 480143, 4882160; 480119, 4882161; 480100, 4882155; 480037, 4882155; 480023, 4882162; 480015, 4882171; 479994, 4882182; 479982, 4882179; 479981, 4882188; 479978, 4882213; 479980, 4882240; 479978, 4882272; 479976, 4882288; 479968, 4882318; 479954, 4882344; 479944, 4882371; 479942, 4882401; 479946, 4882431; 479954, 4882449; 479962, 4882455; 479980, 4882461; 479990, 4882465; 479999, 4882463; 480017, 4882459; 480037, 4882473; 480047, 4882494; 480063, 4882502; 480077, 4882508; 480109, 4882512; 480134, 4882518; 480158, 4882532; 480171, 4882532; 480171, 4882524; 480172, 4882501; 480173, 4882467; 480173, 4882393; 480173, 4882308; 480170, 4882236; 480168, 4882173; 480168, 4882165; 480169, 4882164.

(v) Unit 11E (KL–11E): 481623, 4880789; 481624, 4880785; 481625, 4880779; 481624, 4880773; 481624, 4880768; 481624, 4880763; 481622, 4880754; 481621, 4880747; 481621, 4880738; 481619, 4880734; 481619, 4880726; 481619, 4880715; 481618, 4880702; 481618, 4880691; 481618, 4880679; 481618, 4880667; 481617, 4880657; 481617, 4880647; 481617, 4880635; 481617, 4880621; 481617, 4880610; 481616, 4880599; 481616, 4880591; 481616, 4880583; 481616, 4880575; 481616, 4880566; 481615, 4880556; 481615, 4880554; 481614, 4880528; 481600, 4880528; 481599, 4880529; 481598, 4880529; 481594, 4880529; 481589, 4880526; 481587, 4880525; 481577, 4880525; 481572, 4880525; 481568, 4880525; 481563, 4880525; 481559, 4880525; 481557, 4880525; 481553, 4880523; 481551, 4880523; 481541, 4880523; 481540, 4880523; 481540, 4880523; 481532, 4880524; 481525, 4880523; 481509, 4880519; 481496, 4880519; 481494, 4880520; 481483, 4880523; 481470, 4880525; 481470, 4880525; 481469, 4880525; 481454, 4880526; 481448, 4880527; 481431, 4880531; 481409, 4880530; 481409, 4880530; 481399, 4880530; 481399, 4880545; 481399, 4880545; 481396, 4880551; 481392, 4880559; 481388, 4880568; 481385, 4880577; 481384, 4880586; 481382, 4880595; 481381, 4880600; 481381, 4880606; 481378, 4880617; 481376, 4880627; 481375, 4880635; 481376, 4880642; 481378, 4880648; 481378, 4880649; 481379, 4880651; 481380, 4880651; 481386, 4880656; 481391, 4880657; 481396, 4880658; 481398, 4880658; 481400, 4880657; 481401, 4880674; 481426, 4880675; 481437, 4880674; 481437, 4880675; 481438, 4880675; 481438, 4880675; 481438, 4880675; 481443, 4880679; 481448, 4880686; 481454, 4880692; 481461, 4880697; 481466, 4880702; 481473, 4880709; 481478, 4880715; 481481, 4880724; 481484, 4880732; 481485, 4880737; 481486, 4880744; 481487, 4880751; 481488, 4880756; 481488, 4880762; 481488, 4880768; 481485, 4880774; 481482, 4880779; 481480, 4880786; 481478, 4880790; 481477, 4880795; 481475, 4880803; 481474, 4880808; 481473, 4880813; 481473, 4880820; 481467,

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(vi) Unit 12A (KL–12A): 482637, 4878489; 482654, 4878466; 482492, 4878476; 482492, 4878521; 482544, 4878709; 482595, 4878851; 482687, 4878901; 482911, 4878899; 482883, 4878825; 482792, 4878741; 482744, 4878644; 482654, 4878599; 482625, 4878583; 482637, 4878489.

(vii) Unit 12B (KL–12B): 483911, 4878992; 483905, 4878969; 483900, 4878970; 483898, 4878969; 483891, 4878967; 483885, 4878967; 483879, 4878968; 483872, 4878969; 483865, 4878971; 483862, 4878974; 483860, 4878980; 483860, 4878989; 483862, 4878998; 483869, 4879003; 483877, 4879006; 483887, 4879003; 483896, 4878996; 483911, 4878992.

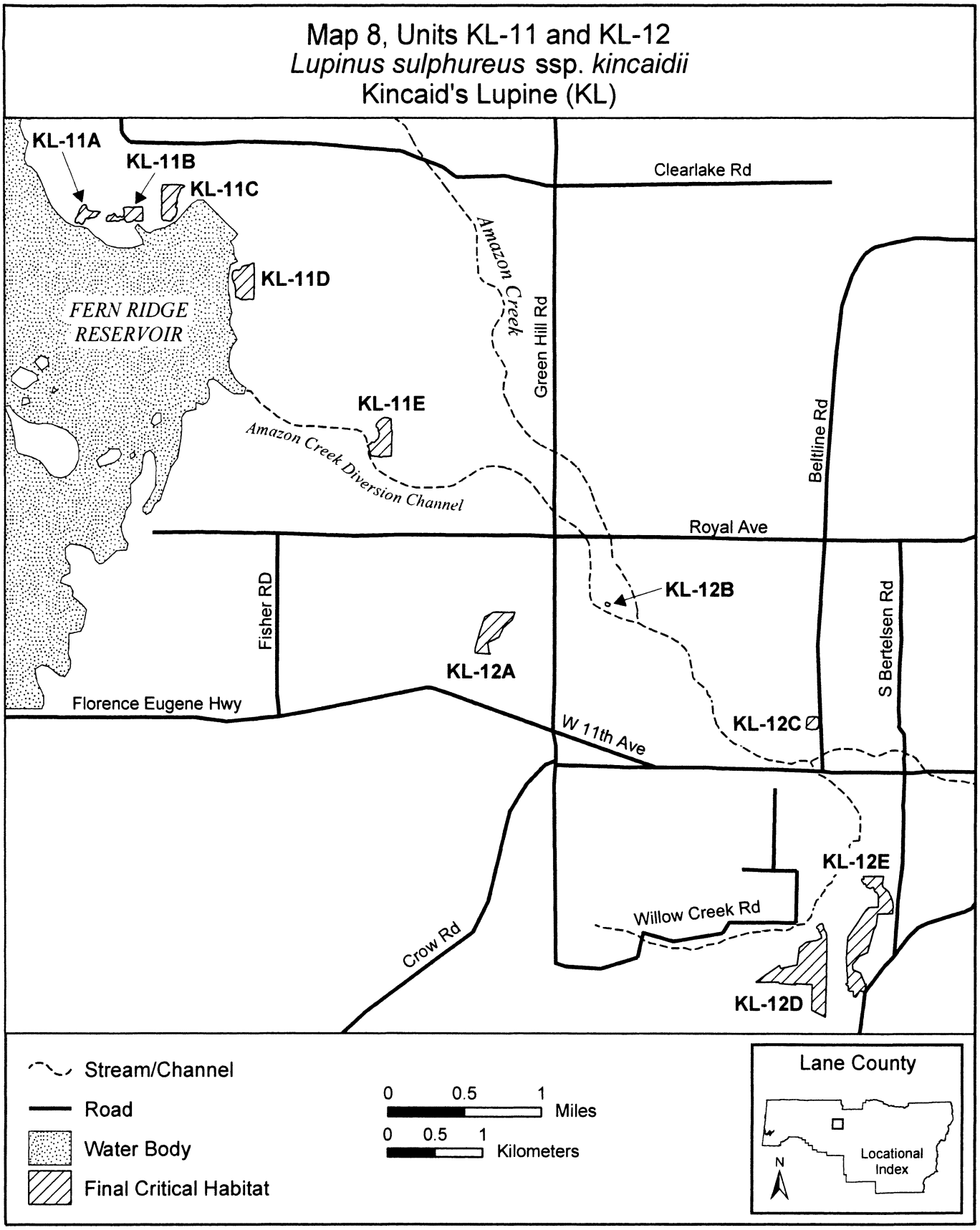
(viii) Unit 12C (KL–12C): 486106, 4877708; 486095, 4877689; 486073, 4877685; 486030, 4877683; 486019, 4877685; 486000, 4877689; 485980, 4877691; 485977, 4877703; 485976, 4877703; 485977, 4877712; 485983, 4877780; 485984, 4877781; 485987, 4877791; 485988, 4877795; 485996, 4877809; 485999, 4877814; 486024, 4877817; 486038, 4877818; 486042, 4877818; 486064, 4877815; 486085, 4877816; 486097, 4877812; 486099, 4877812; 486110, 4877794; 486111, 4877786; 486113, 4877755; 486112, 4877751; 486111, 4877741; 486112, 4877740; 486112, 4877736; 486112, 4877735; 486110, 4877734; 486110, 4877734; 486107, 4877713; 486106, 4877708; 486106, 4877708.

(ix) Unit 12D (KL–12D): 486197, 4875513; 486200, 4875474; 486201, 4875316; 486185, 4874677; 486042, 4874749; 486046, 4875014; 485875, 4875023; 485874, 4875012; 485698, 4875023; 485695, 4875035; 485450, 4875035; 485608, 4875144; 485702, 4875208; 485712, 4875178; 485862, 4875211; 485889, 4875218; 485910, 4875396; 485986, 4875456; 486062, 4875471; 486072, 4875472; 486086, 4875473; 486088, 4875478; 486096, 4875476; 486143, 4875502; 486141, 4875516; 486141, 4875526; 486138, 4875537; 486132, 4875540; 486115, 4875576; 486116, 4875585; 486113, 4875587; 486113, 4875591; 486100, 4875599; 486094, 4875607; 486092, 4875611; 486092, 4875616; 486105, 4875626; 486123, 4875643; 486143, 4875649; 486156, 4875646; 486159, 4875643; 486163, 4875634; 486164, 4875624; 486166, 4875609; 486169, 4875599; 486174, 4875586; 486190, 4875560; 486193, 4875549; 486195, 4875534; 486197, 4875513.

(x) Unit 12E (KL–12E): 486793, 4876121; 486790, 4876107; 486783, 4876064; 486783, 4876051; 486790, 4876034; 486805, 4876021; 486842, 4875993; 486855, 4875977; 486860, 4875962; 486869, 4875946; 486883, 4875908; 486893, 4875878; 486895, 4875857; 486896, 4875826; 486892, 4875791; 486893, 4875754; 486886, 4875756; 486738, 4875751; 486734, 4875744; 486731, 4875711; 486725, 4875665; 486720, 4875629; 486693, 4875573; 486629, 4875348; 486549, 4875312; 486469, 4875220; 486477, 4875168; 486553, 4875136; 486603, 4875021; 486608, 4875021; 486616, 4875020; 486601, 4874935; 486577, 4874945; 486546, 4874949; 486542, 4874941; 486522, 4874907; 486507, 4874882; 486482, 4874888; 486482, 4874900; 486481, 4874944; 486439, 4874947; 486424, 4874957; 486426, 4874980; 486427, 4875000; 486409, 4875006; 486398, 4875018; 486401, 4875024; 486416, 4875027; 486422, 4875028; 486417, 4875033; 486405, 4875292; 486421, 4875508; 486517, 4875652; 486614, 4875792; 486640, 4875821; 486742, 4875825; 486742, 4875951; 486725, 4875983; 486714, 4875983; 486709, 4875984; 486702, 4875993; 486694, 4876021; 486685, 4876033; 486684, 4876035; 486680, 4876031; 486676, 4876028; 486672, 4876025; 486660, 4876020; 486657, 4876018; 486652, 4876018; 486639, 4876025; 486629, 4876029; 486620, 4876034; 486614, 4876044; 486613, 4876052; 486610, 4876058; 486605, 4876068; 486594, 4876067; 486589, 4876066; 486585, 4876068; 486581, 4876078; 486576, 4876086; 486568, 4876093; 486565, 4876102; 486563, 4876110; 486565, 4876115; 486573, 4876118; 486577, 4876118; 486583, 4876115; 486588, 4876113; 486592, 4876119; 486590, 4876128; 486585, 4876137; 486580, 4876144; 486579, 4876147; 486795, 4876145; 486793, 4876121.

(xi) Note: Map 8 (Units 11 and 12 for *Lupinus sulphureus* ssp. *kincaidii* (KL–11 and KL–12)) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(13) Unit 13 for *Lupinus sulphureus* ssp. *kincaidii* (KL–13), Lane County, Oregon.

(i) Unit 13 (KL–13): 477516, 4863792; 477526, 4863769; 477539, 4863754; 477557, 4863729; 477564, 4863719; 477567, 4863715; 477568, 4863712; 477571, 4863710; 477572, 4863707; 477574, 4863705; 477578, 4863708; 477580, 4863709; 477582, 4863709; 477582, 4863706; 477577, 4863701; 477579, 4863699; 477580, 4863696; 477582, 4863695; 477583, 4863691; 477586, 4863689; 477588, 4863683; 477590, 4863679; 477593, 4863675; 477594, 4863672; 477597, 4863666; 477599, 4863663; 477606, 4863654; 477607, 4863651; 477609, 4863649; 477610, 4863646; 477612, 4863643; 477614, 4863639; 477625, 4863645; 477630, 4863645; 477632, 4863640; 477636, 4863638; 477639, 4863631; 477641, 4863628; 477642, 4863626; 477643, 4863623; 477644, 4863621; 477646, 4863616; 477645, 4863614; 477646, 4863612; 477652, 4863614; 477657, 4863610; 477656, 4863601; 477654, 4863598; 477652, 4863596; 477652, 4863592; 477650, 4863590; 477648, 4863591; 477645, 4863598; 477643, 4863602; 477641, 4863603; 477640, 4863605; 477634, 4863604; 477633, 4863603; 477631, 4863608; 477630, 4863613; 477627, 4863615; 477624, 4863618; 477623, 4863622; 477621, 4863625; 477618, 4863628; 477615, 4863629; 477611, 4863632; 477609, 4863632; 477604, 4863635; 477595, 4863637; 477587, 4863637; 477586, 4863640; 477586, 4863645; 477584, 4863649; 477581, 4863650; 477576, 4863652; 477573, 4863651; 477568, 4863648; 477565, 4863648; 477562, 4863645; 477558, 4863642; 477555, 4863641; 477550, 4863644; 477549, 4863646; 477549, 4863658; 477549, 4863666; 477550, 4863668; 477550, 4863670; 477549, 4863672; 477551, 4863675; 477550, 4863680; 477551, 4863684; 477551, 4863689; 477551, 4863691; 477551, 4863696; 477553, 4863696; 477552, 4863697; 477523, 4863697; 477519, 4863696; 477515, 4863697; 477495, 4863697; 477493, 4863698; 477491, 4863697; 477475, 4863697; 477471, 4863698; 477469, 4863697; 477460, 4863697; 477476, 4863673; 477480, 4863605; 477440, 4863591; 477378, 4863589; 477374, 4863585; 477360, 4863580; 477344, 4863582; 477332, 4863589; 477328, 4863592; 477293, 4863594; 477280, 4863594; 477223, 4863645; 477206, 4863699; 477241, 4863716; 477310, 4863725; 477372, 4863723; 477355, 4863728; 477341, 4863733; 477332, 4863733; 477326, 4863738; 477320, 4863745; 477314, 4863752; 477309, 4863756; 477298, 4863761; 477295, 4863763; 477287, 4863764; 477285, 4863760; 477282, 4863756; 477277, 4863752; 477271, 4863755; 477270, 4863757; 477265, 4863763; 477259, 4863773; 477261, 4863782; 477264, 4863786; 477265, 4863794; 477265, 4863801; 477265, 4863809; 477264, 4863817; 477262, 4863825; 477264, 4863835; 477270, 4863842; 477275, 4863846; 477279, 4863853; 477280, 4863860; 477278, 4863868; 477274, 4863872; 477270, 4863874; 477264, 4863875; 477260, 4863880; 477263, 4863883; 477267, 4863885; 477271, 4863889; 477274, 4863894; 477273, 4863903; 477270, 4863909; 477272, 4863916; 477275, 4863922; 477270, 4863926; 477267, 4863930; 477270, 4863936; 477275, 4863939; 477281, 4863940; 477288, 4863940; 477298, 4863940; 477302, 4863937; 477304, 4863927; 477306, 4863922; 477312, 4863912; 477311, 4863909; 477309, 4863905; 477305, 4863899; 477300, 4863892; 477298, 4863887; 477296, 4863883; 477294, 4863878; 477296, 4863874; 477300, 4863870; 477304, 4863869; 477306, 4863865; 477304, 4863859; 477304, 4863853; 477298, 4863847; 477296, 4863839; 477297, 4863834; 477300, 4863830; 477306, 4863828; 477307, 4863827; 477309, 4863824; 477310, 4863819; 477310, 4863815; 477313, 4863804; 477315, 4863796; 477316, 4863790; 477323, 4863787; 477333, 4863785; 477344, 4863784; 477356, 4863783; 477361, 4863783; 477372, 4863783; 477384, 4863784; 477400, 4863783; 477416, 4863784; 477432, 4863784; 477441, 4863785; 477448, 4863789; 477454, 4863796; 477455, 4863807; 477456, 4863822; 477455, 4863836; 477456, 4863859; 477455, 4863868; 477456, 4863878; 477455, 4863890; 477452, 4863897; 477445, 4863910; 477441, 4863916; 477439, 4863926; 477438, 4863933; 477441, 4863937; 477450, 4863939; 477464, 4863940; 477473, 4863939; 477482, 4863939; 477486, 4863935; 477487, 4863927; 477488, 4863922; 477491, 4863910; 477493, 4863901; 477495, 4863889; 477498, 4863873; 477502, 4863854; 477508, 4863822; 477516, 4863792.

(ii) Note: Map 9 (Unit 13 for *Lupinus sulphureus* ssp. *kincaidii* (KL–13)) follows:

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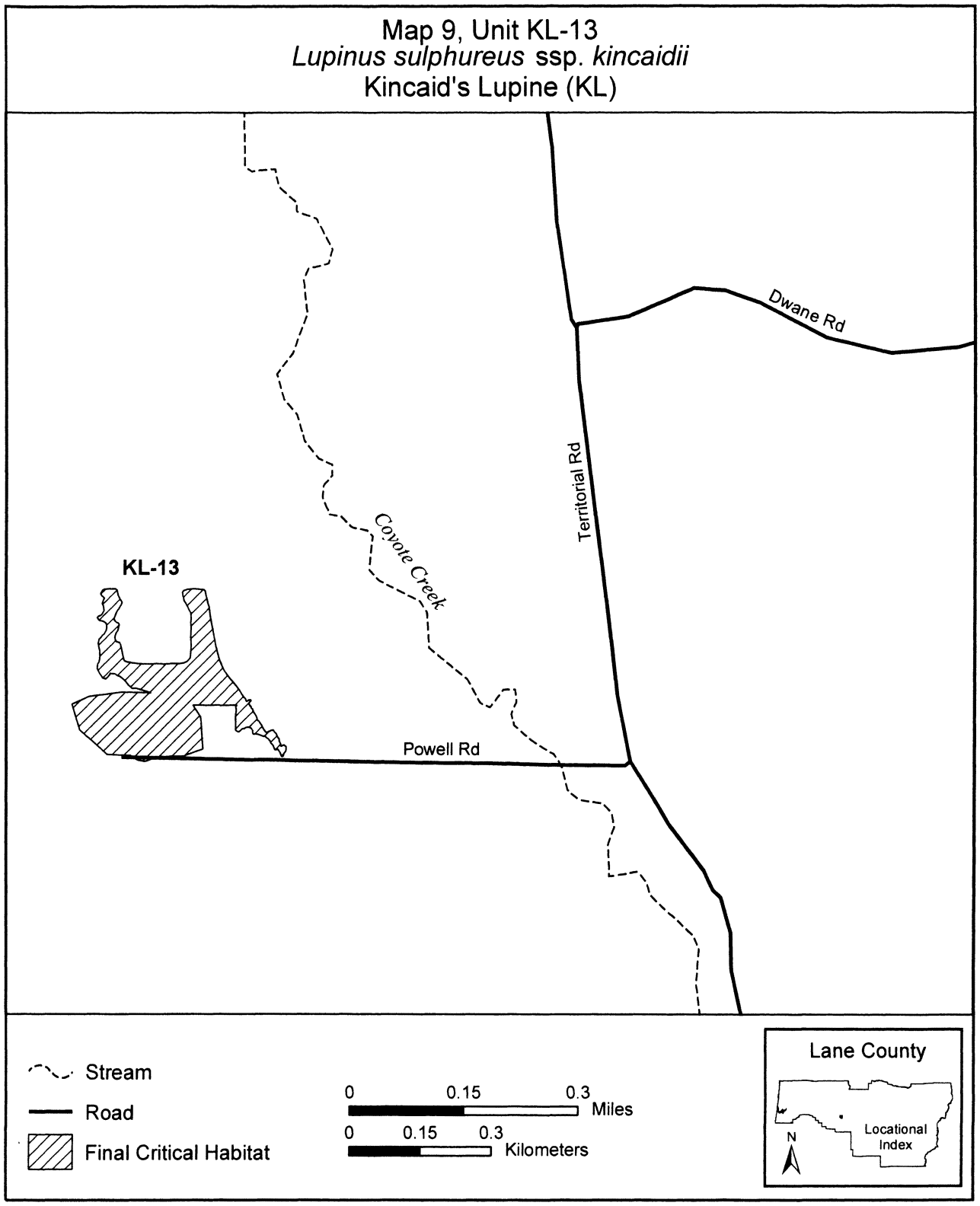


* * * * *

Dated: October 12, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8809 Filed 10–30–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
October 31, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for the Cape Sable Seaside Sparrow; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU79

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for the Cape Sable Seaside Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat for the endangered Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 156,350 acres (ac) (63,273 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Miami-Dade and Monroe counties, Florida.

DATES: We will accept comments from all interested parties until January 2, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 15, 2006.

ADDRESSES: If you wish to comment, you may submit comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to Tylan Dean, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960.

2. You may send comments by electronic mail (e-mail) to *Tylan_Dean@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may fax your comments to 772–562–4288.

4. You may submit comments via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida (telephone 772–562–3909).

FOR FURTHER INFORMATION CONTACT: Tylan Dean, South Florida Ecological Services Office (*see* **ADDRESSES**); telephone 772–562–3909; facsimile 772–562–4288. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 7 days a week and 24 hours a day.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Cape Sable seaside sparrow habitat, including areas occupied by Cape Sable seaside sparrows at the time of listing and containing features essential to the conservation of the species, and areas not occupied at the time of listing that are essential to the conservation of the species;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). Please submit electronic comments to *tylan_dean@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: *Cape Sable seaside sparrow*'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our South Florida Ecological Services Office at 772–562–3909.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home addresses, *etc.*, but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under the Act's section 4(b)(2), there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,311 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the

section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004). In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless and is expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

We intend to discuss topics directly relevant to the designation of critical habitat in this proposed rule. Additional topics may be found under the ''Primary Constituent Elements'' discussion. For more information on the Cape Sable seaside sparrow, including characteristics and life history, refer to the South Florida Multi-Species Recovery Plan, available at the South Florida Ecological Services Web site *http://www.fws.gov/verobeach*.

The Cape Sable seaside sparrow is one of eight extant subspecies of seaside sparrow. Its distribution is limited to the short-hydroperiod wetlands at the downstream end of the greater Everglades system on the southern tip of mainland Florida. Unlike most other subspecies of seaside sparrow, which occupy primarily brackish tidal systems (Post and Greenlaw 1994, p. 4), the Cape Sable seaside sparrow currently occurs primarily in the short-hydroperiod freshwater wet prairies, also referred to as marl prairies, though it still occupies brackish marshes in some areas.

The Cape Sable seaside sparrow is generally sedentary, secretive, and non-migratory, and it occupies the marl prairies of southern Florida year-round. During the breeding season (March to August), male sparrows establish and defend territories that are variable in size, with average sizes ranging from 2.2 to 8.9 ac (0.9 to 3.6 ha) within different sites and years (Werner and Woolfenden 1983, p. 67; Pimm *et al.* 2002, p. 18). Sparrows are monogamous (Post and Greenlaw 1994, p. 10), with a single female occurring within a male's breeding territory. Throughout the breeding season, the majority of a sparrow pair's activities occur within this territory, including breeding, feeding, and sheltering. Outside of the breeding season, sparrows generally remain sedentary in the same general vicinity of their breeding territories, but occupy a larger area than the breeding season territory. Average non-breeding season home range size was approximately 42.1 ac (17.1 ha) and ranged from 14.1 to 137.1 ac (5.7 to 55.5 ha) (Dean and Morrison 2001, p. 36). Some individuals make exploratory movements away from their territories and may occasionally relocate their territories and home ranges before again resuming a sedentary movement pattern (Dean and Morrison 2001, p. 36).

Sparrows are generally short-lived, with an average individual annual survival rate of 66 percent (Lockwood *et al.* 2001, p. 278). The average lifespan is probably 2 to 3 years. Consequently, a sparrow population requires favorable breeding conditions in most years to be self-sustaining and cannot persist under poor conditions for extended periods (Lockwood *et al.* 1997, p. 729; Lockwood *et al.* 2001, p. 281; Pimm *et al.* 2002, p. 74).

Sparrows generally begin nesting in early March (Lockwood *et al.* 2001, p. 278), but they may begin territorial behavior, courtship, and nest-building in late February (Werner and Woolfenden 1983, p. 64; Lockwood *et al.* 1997, p. 722). This timing coincides with the dry season, and most areas

within the marl prairies are either dry or only shallowly inundated at the beginning of the breeding season. Sparrows build nests above the ground surface, typically 6.7 to 7.1 inches (in) (17 to 18 centimeters (cm)) over the ground (Werner 1975, p. 147; Lockwood *et al.* 2001, p. 278). Nests are woven into clumps of dense vegetation and are well-concealed (Werner 1975, p. 145; Post and Greenlaw 1994, p. 14). Nest cups are consistently concealed from above (Post and Greenlaw 1994, p. 13), either through construction of a domed cover or through modifying vegetation in the vicinity (Werner 1975, p. 142; Post and Greenlaw 1994, pp. 13–14). The sparrow nesting cycle, from nest construction to independence of young, lasts approximately 30 to 50 days (Werner 1975, p. 163; Lockwood *et al.* 2001, p. 278), and sparrows may renest following both successful and failed nesting attempts (Werner 1975, p. 163; Post and Greenlaw 1994, p. 13; Lockwood *et al.* 2001, p. 278). Because of the long breeding season in southern Florida, sparrows regularly nest several times within a year and may be capable of successfully fledging 2 to 4 clutches, though few sparrows probably reach this level of success (Lockwood *et al.* 2001, p. 278). Second and third nesting attempts may occur during the early portion of the wet season, and nests later in the season occur over water. The height of nests above ground surface increases after water levels rise, and average height of late-season nests is 8.3 in (21 cm) above ground surface (Lockwood *et al.* 2001, p. 278).

Nest success rates vary among years and range from 12 to 53 percent (Lockwood *et al.* 2001, p. 278). Nest predation is the primary documented cause of nest failure (Pimm *et al.* 2002, p. 23), accounting for more than 75 percent of all nest failures (Lockwood *et al.* 1997, p. 723). Unlike many other wetland species, nest predation rates for sparrows are lowest under dry conditions. As water levels begin to rise above ground surface with the onset of the summer rains in May or June, nests become more detectable, and therefore, nest predation rates also rise. Nests that are active after June 1, when water levels are above ground, are more than twice as likely to fail as nests during drier periods (Lockwood *et al.* 2001, p. 278). This effect appears to be a result of both increased likelihood of nests being flooded and an increased likelihood of predation (Lockwood *et al.* 1997, p. 724; Lockwood *et al.* 2001, p. 278; Pimm *et al.* 2002, p. 25).

The Cape Sable seaside sparrow was first discovered in the cordgrass (Spartina spp.) marshes on Cape Sable in 1918 and was originally thought to be limited in distribution to Cape Sable (Howell 1919, p.87). On September 2, 1935, a severe hurricane struck the Keys and southern Florida, with the hurricane's center passing within a few miles of Cape Sable (Stimson 1956, p. 490). Post-hurricane observations suggested that, in the vicinity of Cape Sable, water levels resulting from the storm surge rose approximately 8 feet (ft) (2.4 meters (m)) above normal water levels, and the sparrow was thought to have disappeared from the area as a result of the storm, despite occasional reports of sparrows that could not be verified (Stimson 1956, p. 492). Between 1935 and the 1950s, searches on Cape Sable failed to locate sparrows (Stimson 1956, p. 492). Despite the fact that sparrows were again reported on Cape Sable in 1970 (Kushlan and Bass 1983, p. 140; Werner and Woolfenden 1983, p. 57), the habitat in the area had been changing significantly from cordgrass marshes to mangroves and mud flats since the 1935 hurricane, and sparrows are considered to have been extirpated from this area since 1981 (Kushlan and Bass 1983, p. 142).

In 1928, Cape Sable seaside sparrows were reported to the northwest of Pinecrest, along the western mainland coast of Florida, in the vicinity of what is today Everglades City (Nicholson 1928, p. 237). The location of this mainland record was improperly reported, and the true location was not accurately reported until 1954 (Sprunt 1954, p. 479). Stimson conducted extensive searches on the Florida mainland in the vicinity of the corrected 1928 sparrow observation and found sparrows to be widespread throughout both coastal cordgrass (reported as *S. patens*, but probably *S. bakeri*) (Werner and Woolfenden 1983, p. 60) marshes and freshwater prairies along the western edge of the Everglades (Stimson 1956, p. 490). However, by 1968, Stimson (1968, p. 867) concluded that widespread fires in this region had severely impacted the sparrows in that area, and he expected them to be extirpated from the area as a result.

In the early 1940s, Anderson (1942, p. 12) reported sparrows in the coastal marshes in the vicinity of Ochopee. Subsequent searches revealed that sparrows occurred south of Ochopee along the coastal marshes landward of the mangrove zone (Stimson 1956, p. 492). Werner (1975, p. 42) reported that habitat occupied by sparrows in the Ochopee area was changing from cordgrass marshes to other species, and mangroves were encroaching into the area. Werner's searches in the area from 1970 through 1975 (Werner 1975, p. 42) revealed a decline in the number of sparrows and the amount of habitat available in the area. Sparrows were extirpated from this area by 1981 (Kushlan and Bass 1983, p. 143), and there is little or no remaining suitable habitat in the area.

Within the last 20 years, sparrows have consistently occurred within the marl prairies that have had appropriate hydrologic and vegetation conditions over time. There are six spatially distinct regions across the southern Everglades where sparrows currently occur, and these same areas have consistently supported the sparrow population. These regions are separated from each other by areas of unsuitable habitat, such as the forested communities of Long Pine Key, the deep-water slough communities of Shark River Slough and Taylor Slough, and other areas that do not support the specific conditions that sparrows require. The distances between these regions range from 2 to 20 miles (mi) (3.2 to 32.2 kilometer (km)), and sparrows rarely move among the regions (Walters *et al.* 2000, p. 1107; Lockwood *et al.* 2001, p. 279), though some such movements have now been documented (Lockwood 2006, p. 2). For the last 20 years, these areas have been commonly referred to as sparrow subpopulations A through F (Pimm *et al.* 2002, p. 69).

In 1972, Cape Sable seaside sparrows were discovered in the vicinity of Taylor Slough, in what is today known as subpopulation C, east of Shark River Slough (Ogden 1972, p. 852; see the individual units descriptions in the Proposed Critical Habitat section for identification of the subpopulations). Subsequent investigation revealed that a sparrow had been reported to Everglades National Park (ENP) in this area in 1958, but the observation was never verified (Werner 1975, p. 32; Pimm *et al.* 2002, p. 10). Surveys conducted with the use of a helicopter by Werner in 1974 and 1975 sought to characterize the distribution and abundance of sparrows in this region. These initial surveys revealed that sparrows were widely distributed and abundant (Werner 1975, p. 32). The sparrow locations reported included locations within what are today known as subpopulations B, C, D, E, and F. They occupied an area of approximately 21,745 to 31,629 ac (8,800 to 12,800 ha), and the number of sparrows occurring within this area was estimated to range from 1,500 to 26,300 individuals (Werner 1975, p. 32). Because of the magnitude of the area occupied and the large estimates of population size, ecologists concluded that sparrows probably occurred within this area for

many years. The difficulty in accessing the areas and the vastness of the areas (Kushlan and Bass 1983, p. 145), as well as the secretiveness of the sparrow, all contributed to the failure to document the sparrow's occurrence in the area previously. The sparrow populations within these areas probably fluctuated over time in response to changes in habitat suitability resulting from fires and hydrologic conditions (Taylor 1983, p. 148; Kushlan and Bass 1983, p. 145). These fluctuations may have also contributed to the lack of sparrow detections in these areas previously.

Throughout the known history of the Cape Sable seaside sparrow, the species has been recognized to associate with either of two vegetation communities: (1) The cordgrass marshes that are partly tidally influenced and occur within a narrow band of the coast just landward from the mangrove communities, and (2) the short-hydroperiod freshwater marl prairies that flank the deeper sloughs of the southern Everglades. The tidally influenced cordgrass marshes constitute typical seaside sparrow habitat (Post and Greenlaw 1994, p. 3). Occurrence year-round within the freshwater marl prairies is relatively unique among seaside sparrows, with only the now-extinct dusky seaside sparrow (Ammodramus maritimus nigrescens) exhibiting a similar habitat affinity; in those freshwater areas occupied by the dusky seaside sparrow, the habitat was still primarily composed of cordgrass (Post and Greenlaw 1994, p. 4). The freshwater habitats occupied by the Cape Sable seaside sparrow are not dominated by cordgrass; the most commonly associated species reported is muhly grass (*Muhlenbergia filipes*) (Werner 1975, p. 77; Kushlan and Bass 1983, p. 145; Werner and Woolfenden 1983, p. 59; Post and Greenlaw 1994, p. 4). However, a variety of vegetation species occurs within the freshwater marl prairies occupied by Cape Sable seaside sparrows, including vegetation from which *Muhlenbergia* is absent (Ross *et al.* 2006, pp. 7–16). Other dominant species that occur in these prairies include sawgrass (*Cladium jamaicense*), Florida little bluestem (*Schizachyrium rhizomatum*), black-topped sedge (*Schoenus nigricans*), and beak rushes (*Rhynchospora* spp.) (Werner and Woolfenden 1983, pp. 57–61; Ross *et al.* 2006, pp. 6–16).

Cape Sable seaside sparrows occupy the above two community types year-round, and the vegetation must support all sparrow life stages. Sparrows occur in the heart of the expansive Everglades wetland system, in a harsh environment where flooding, fires, and high temperatures occur regularly. During periods when the plant communities are dry, usually coinciding with the early winter and late spring (December to May), sparrows travel across the ground beneath the grasses and only occasionally perch on the vegetation. During the wet season (June to November), these areas are continually inundated, with peak water depths occasionally exceeding 2 ft (0.6 m) (Nott *et al.* 1998, p. 26). During these periods, sparrows travel within the grass, perching low in the clumps, hopping among the bases of dense grass clumps, and walking over matted grass. They fly more frequently and regularly perch low in the vegetation, but they generally remain extremely inconspicuous (Dean and Morrison 2001, p. 51).

Periphyton is another important characteristic of sparrow habitat. Periphyton is a complex matrix of calcitic algae and associated organic detritus that plays an important role in the development of soils within the marl prairies (Davis *et al.* 2005, p. 825). During wet periods, a periphyton mat forms on all submerged substrates, including underlying limestone and vegetation stems. Marl soil accretion is directly related to the extent and productivity of periphyton (Davis *et al.* 2005, p. 825), and marl soils are consequently generally deeper in areas with longer hydroperiods. In some areas, a dense periphyton mat forms on the water surface and intertwines with the vegetation such that sparrows may be able to move across it under some conditions. These periphyton mats are an integral component of marl prairies and can affect the vegetation species and structure in an area and even the microclimate, which all relates to the suitability of an area for sparrows.

Small tree islands and individual trees and shrubs occur throughout the areas occupied by the sparrows, but at a very low density. Sparrows do not require woody vegetation during any aspect of their normal behavior and generally avoid areas where shrubs and trees are either dense or evenly distributed. However, the small tree islands and scattered shrubs and trees may serve as refugia during extreme environmental conditions and may be used as escape cover when fleeing from potential predators (Dean and Morrison 2001, p. 38). Because of the sparrows' general aversion to dense trees and woody vegetation, encroaching trees and shrubs can quickly degrade potential habitat.

After fires, sparrows do not regularly occupy burned areas for 2 to 3 years (Pimm *et al.* 2002, p. 97; Lockwood *et al.* 2005, p. 10), though they can re-occupy areas after only one year under some conditions (Taylor 1983, p. 151; Werner and Woolfenden 1983, p. 62). This is probably a result of the sparrow's dependence on some level of structural complexity that must develop to provide cover, support nests, and allow them to move through the habitat during wet periods. Fire is not uncommon within the areas occupied by sparrows, and nearly all areas where sparrows currently occur have been burned within the past 10 to 20 years (Lockwood *et al.* 2003, p. 466). Large fires, such as the Ingraham fire of 1989, which burned approximately 98,842 ac (40,000 ha), pose a significant risk to sparrow subpopulations because they have the potential to render the habitat supporting several entire sparrow subpopulations unsuitable for 2 to 3 years or more (Lockwood *et al.* 2003, p. 467). A combination of naturally ignited and human-ignited (prescribed, arson, or accidental) fires have resulted in different fire frequencies in different portions of the sparrow's range. Most of the plant species that occur within sparrow habitat are fire-adapted and respond quickly following fire (Snyder 2003, pp. 203–204). Several of the dominant grass species, including *Muhlenbergia,* also flower primarily following fires during the growing season (Main and Barry 2002, p. 433). Under normal conditions, fires do not kill the individual plants that make up the dominant species in sparrow habitat, and fires only remove the above-ground growth and leaf litter (Snyder and Schaeffer 2004). The plant species rapidly respond, sprout quickly following fire, and grow rapidly. Many of the dominant grasses may grow more than 15 in (38 cm) after only a few weeks (Steward and Ornes 1975, p. 167; Snyder 2003, pp. 203–204). For this reason, the species composition and even the general structural characteristics of the vegetation may be nearly indistinguishable from unburned areas only 2 to 3 years after burning (Lockwood *et al.* 2005, pp. 8–9). Under unfavorable conditions such as extreme wet or dry periods, vegetation recovery from fire may be prolonged, and both species composition and structure may be affected.

Hydrology of the area is an important component of the habitat. In addition to directly affecting the sparrow and its ability to forage, move within habitat, and nest, hydrologic patterns largely dictate the plant community composition, and even the fire frequency. Ross *et al.* (2006) have investigated the relationship between vegetation species composition and hydroperiods. Their preliminary results

indicate that hydroperiods in the range of 90 to 270 days support the plant species upon which sparrows primarily depend (Ross *et al.* 2006, pp. 14, 40). Longer hydroperiods result in such unfavorable habitat conditions as dense, continuous growth of sawgrass or spike rushes (*Eleocharis* spp.) that sparrows do not occupy. Shorter hydroperiods may allow encroachment of woody species and may have an elevated potential of fire (Davis *et al.* 2005, p. 828). Within this optimal inundation duration, several different vegetation associations may result, but most are used regularly by sparrows. The local variability across the landscape within areas where sparrows occur produces a heterogeneous arrangement of vegetation conditions that provide habitat for sparrows during some environmental conditions. A complex relationship between hydrologic conditions, fire history, and soil depth determines the specific vegetation conditions at a site, and variation in these characteristics may result in a complex mosaic of vegetation characteristics (Taylor 1983, p. 152; Ross *et al.* 2006, pp. 1–46). This variability is characteristic of these habitats.

Average annual rainfall in the Everglades is approximately 56 in (142 cm) (ENP 2005, p. 15), with the majority falling within the summer months, which coincides with the latter half of the sparrow nesting season. This rainfall has a strong influence on the hydrologic characteristics of the marl prairies. However, throughout southern Florida, including sparrow habitat, hydrologic conditions are also strongly influenced by water management actions. A complex system of canals, levees, pumps, and other water management structures, operated by complex operational rules, can have profound impacts on the hydrologic conditions throughout much of the remaining marl prairies (Johnson *et al.* 1988, p. 31; Van Lent and Johnson 1993, pp. 4–7; Pimm *et al.* 2002, p. 106).

The interaction of fire and flooding also strongly influences the suitability of habitat for sparrows. In the most extreme case, the vegetation in areas that burn and are subsequently flooded within 1 to 3 weeks after the fire, either as a result of a natural rainfall event or human-caused hydrologic changes, may not recover for a long period, possibly 10 years or more (Ross 2006). Alternatively, if water levels overtop the sprouting grasses, the grasses may die, resulting in an absence of vegetation. Recovery of vegetation from these circumstances has to result from seed germination, which requires a much longer time for recovery and may result in a different plant species composition and structure from the vegetation that was present prior to the fire. Under less extreme conditions, vegetation may recover following fire more quickly when water levels are near the soil surface, providing ample water for the plants.

The six distinct areas that Cape Sable seaside sparrows occupy have different environmental conditions that affect the likelihood of flooding and fire. Areas of sparrow habitat that are at higher elevation or in areas that tend to be overdrained, such as some areas proximate to urban and agricultural areas (Van Lent and Johnson 1993, p. 5), are consequently more likely to burn under dry conditions, but may be more likely to be favorable to sparrows under very wet conditions. Similarly, areas of sparrow habitat that are immediately downstream from water control structures and in relatively low-lying areas are generally less likely to burn frequently (Ross *et al.* 2006, p. 43), but they may be more subject to damaging water levels than other areas during wet periods (Nott *et al.* 1998, p. 31; Pimm *et al.* 2002, p. 107). This variability in the physical and environmental characteristics among areas occupied by the sparrows, in addition to the local meteorological variability within the region, may help maintain the sparrow population over time.

Previous Federal Actions

On March 11, 1967 (32 FR 4001), the Cape Sable seaside sparrow was determined to be ''threatened with extinction,'' and was conferred protection under the Endangered Species Preservation Act (Pub. L. 89–669). The Cape Sable seaside sparrow was subsequently added to the list of species protected under the Endangered Species Conservation Act of 1969 (Pub. L. 91–135), and all species listed on the Conservation Act were adopted by the Act in 1973 and assigned to endangered status. Critical habitat was designated for the Cape Sable seaside sparrow on August 11, 1977 (42 FR 40685) and was corrected on September 22, 1977 (42 FR 47840). The 1977 critical habitat designation for Cape Sable seaside sparrow encompasses approximately 197,260 ac (79,828 ha). The first recovery plan for the sparrow was completed in April 1983. A revised recovery plan for the sparrow was finalized in May 1999. On August 26, 1999, Sidney Maddock, Biodiversity Legal Foundation, submitted a petition to the Service, on behalf of himself, the Biodiversity Legal Foundation, the Florida Biodiversity Project, Brian Scherf, and Rosalyn Scherf, to revise critical habitat for the Cape Sable seaside sparrow. On July 10, 2000 (65 FR 42316), we published a 90-day finding in which we determined that the petition presented substantial information indicating that revision may be warranted. On October 23, 2001 (65 FR 53573), we published a 12-month finding in which we announced that revision of critical habitat may be warranted as a result of detailed new information about sparrow distribution and ecology that had been obtained since critical habitat was originally designated. We concluded that some new areas would likely need to be added and some removed from the critical habitat designation. For more information on previous Federal actions, including the rationale for revising critical habitat, refer to that 12-month finding.

Until now, work on the revision of critical habitat for the Cape Sable seaside sparrow has been precluded due to other, higher priority listing and critical habitat actions. On December 20, 2000, a lawsuit was filed in the U.S. District Court for the District of Columbia alleging that the Service had not complied with the Act by failing to issue a 12-month finding as to how it planned to proceed with the petitioned revision to critical habitat and that the revision was withheld or unreasonably delayed under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). On September 30, 2003, the Court ruled that the Service complied with the Act by issuing the finding (see above), and was exercising reasonable discretion in postponing developing a proposed rule to revise critical habitat (*Biodiversity Legal Foundation* v. *Norton*, 285 F. Supp. 2d (D.D.C. 2003)). However, it ordered the Service to specify a date on which we would begin work on a rule to revise critical habitat for the Cape Sable seaside sparrow and estimate how long the process would take. On November 28, 2003, the Service notified the Court that a proposed rule to revise the critical habitat would be submitted to the **Federal Register** by October 24, 2006, and a final rule would be completed within 12 months of the publication of the proposed rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) 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 (I) essential to the conservation of the species and (II) that may require special management considerations or

protection; and (ii) 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 to use and 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 pursuant to the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of 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 government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. [As discussed below, such areas may also be excluded from critical habitat under section 4(b)(2) of the Act.] Furthermore, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, an area that was not known to be occupied at the time of listing but is currently occupied by the species will likely be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service 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 determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources 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. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the 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 (HCP), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas that contain the physical and biological features that are essential to the conservation of the Cape Sable seaside sparrow and other areas that are essential to the conservation of the sparrow. We reviewed all available published and unpublished literature about the ecology of the sparrow, including the 1999 petition and supporting information provided with it. We reviewed the revised recovery plan (Service 1999a) for the sparrow, as well as the previous recovery plan (Service 1983). We evaluated management plans that address specific management needs of sparrows and their habitats and past section 7 consultations that addressed the needs of the sparrow, including the 1999 jeopardy biological opinion on Test 7 of the Experimental Program of Water Deliveries (Service 1999b), and the reasonable and prudent measures that were implemented as a result of the biological opinion. We reviewed reports received from section 7 consultations and from researchers who hold section 10(a)(1)(A) research permits. We reviewed past records of sparrow occurrence, distribution, and habitat use over time that were compiled by Florida Fish and Wildlife Conservation Commission (FWC) personnel, National Park Service (NPS) personnel, and independent researchers contracted by the Service and the NPS. We obtained spatial information on the location of sparrow occurrences recorded on surveys from 1981 to present and spatial data that reflect vegetation type, fire history, and hydrologic conditions within these areas. These data were entered into a geographic information system (GIS) for analysis. We reviewed information resulting from hydrologic modeling of several water management regimes that have been implemented in the region. We also evaluated the conclusions and recommendations that resulted from an independent peer review of the science related to sparrows and their management that was conducted by the American Ornithologists' Union in 1999 (Walters et al. 2000), and the recommendations and conclusions of the 2003 South Florida Ecosystem Restoration Multi-species Avian Workshop (SEI 2003), which was held to develop a common understanding of how four avian species, including the Cape Sable

seaside sparrow, would respond to Everglades restoration.

We have also reviewed available information on the habitat requirements of this species. In determining PCEs, we reviewed all available published and unpublished literature on the ecology, habitat needs, and factors limiting the sparrow's occurrence and distribution, including information in published, peer-reviewed journal articles; unpublished reports and theses; and preliminary results from ongoing research.

The original critical habitat designation (August 11, 1977, 42 FR 40685; corrected September 22, 1977, 42 FR 47840) was evaluated thoroughly during our analysis. However, the 1977 rule did not include the specific criteria used to delineate the boundaries of the original designation and did not identify any PCEs. Therefore, for this proposed rule, we chose to begin our analysis by considering historic habitat available to the species and habitat areas that support or have recently supported sparrows. All historical and recent locations of sparrow occurrences were mapped to better delineate sparrow habitat. Current and historical habitat data from several sources were also evaluated to identify areas outside of the known occupied range of the Cape Sable seaside sparrow that may support sparrows or have the potential to support sparrows. However, while historical habitat maps identified several areas outside of the known occupied range where sparrows may have occurred historically, these areas no longer contain habitat features that would support sparrows. Therefore, we do not propose as revised critical habitat any areas outside the geographical areas presently occupied by the species. For the purpose of this rule, areas presently occupied are those where sparrows have been recorded between 1981 and the present. We are not proposing to designate critical habitat on Cape Sable, in the Ochopee area, or in agricultural areas in the vicinity of Homestead where sparrows previously occurred.

After considering these habitat areas, our efforts focused on identifying those areas occupied at the time of listing that contain the physical and biological features essential to the conservation of Cape Sable seaside sparrows and those other areas that are essential to the conservation of the Cape Sable seaside sparrow and are presently occupied. To determine critical habitat boundaries, we began with comprehensive surveys of sparrow habitat conducted from 1981 to 2006 to identify all survey points where sparrows have been detected. Sparrow surveys are based on a point-count survey method, which is a standard method for passerine birds. Surveys are conducted each year during the peak of sparrow breeding season. Details of the survey are described in Pimm et al. 2002. An array of survey points has been established across all potential sparrow habitats with survey points arranged on a grid. Because the survey area covers an expanse of area that does not contain roads or trails, observers are dropped off at survey points from a helicopter. The helicopter departs the area prior to the count initiating. An observer records all sparrows heard or seen at the point during a 7-minute period. The great majority of sparrow detections consist of territorial males. Following the completion of the count, the helicopter returns to transport the observer to the next survey point. Each survey point is visited once per season.

Because survey points are arranged on a 0.6-mi (1-km) grid and sparrows may only be detected accurately within 656 ft (200 m) of a survey point (Pimm *et al.* 2002, p. 153), some areas between survey points remain unsurveyed. We used a 2,460-ft (750-m) radius around each sparrow occurrence to account for unsurveyed areas adjacent to or between the survey points where sparrows likely occurred. The 2,460-ft (750-m) radius distance is approximately half of the distance between diagonally adjacent survey points. In addition, this distance is slightly larger than the sum of the reliable sparrow detection distance from a point (200 m) plus the diameter of an average non-breeding season sparrow home range (465 m, assuming a circular home range based on home range sizes in Dean and Morrison 2001, p. 36). This distance consequently represents an estimate of the area of habitat that sparrows detected at a point are likely to use.

We drew a boundary that encompassed the 750-m radius around sparrow locations but also took into account the particular habitat characteristics as determined through detailed inspection of satellite imagery, aerial photography, and habitat maps. Outlying sparrow occurrences that were recorded in only one year and were not adjacent to other recorded sparrow observations were excluded. Areas along the boundary that did not contain features essential for the sparrow (such as tree islands, cypress forest, and deep-water slough communities) were excluded from the unit. The resulting boundary of each unit encompassed the core areas of habitat that have been occupied by sparrows since 1981. This approach relies on the results of multiple years of surveys and consequently provides a robust assessment of sparrow habitat.

We believe the method we have used to delineate critical habitat encapsulates the habitat that is important over time for all aspects of the sparrow's life history, accounting for the degree of natural variability in environmental and habitat conditions that occur within the Everglades.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider within areas occupied by the species at the time of listing those physical and biological features that are essential to the conservation of the species (PCEs), and that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The following information provides the justification and background for the PCEs for the Cape Sable seaside sparrow as they are defined at the end of the Primary Constituent Elements section.

Space for Individual and Population Growth and Normal Behavior (Open Contiguous Habitat)

Sparrow subpopulations require large patches of contiguous open habitat (approximately 4,000 ac/1,619 ha or larger). The minimum area required to support a population has not been specifically determined, but the smallest area that has remained occupied by Cape Sable seaside sparrows for an extended period is this size. Individual sparrows are area-sensitive and generally avoid the edges where other habitat types meet the marl prairies. They will only occupy small patches (less than 100 ac; 40.5 ha) of marl prairie vegetation when the patches occur within large, expansive areas and are not close to forested boundaries (Dean and Morrison 2001, p. 62–63). Once sparrows establish a breeding territory, they exhibit high site fidelity, and each individual sparrow may only occupy a small area for the majority of its life. Because sparrows are generally sedentary and avoid forested areas, they are not likely to travel great distances to find mates or to find outlying patches of

suitable habitat. The occurrence of sparrows over time within each of the subpopulations shows a centrality in which sparrows most consistently occur and are most abundant near the center of the patch of habitat in which they occur.

Within the marl prairies, individual trees or shrubs greater than 4.9 ft (1.5 m) tall at a density greater than or equal to 2.5 per ac (1 per ha), excluding tree islands composed of native tropical-Caribbean species occurring on an elevated substrate, will make the site unsuitable.

As detailed in the background section, structure of habitat within the marl prairie (muhly grasses and little overstory) and areas of potential habitat are also important to sparrows because of the inherent variability in habitat conditions. While there is relatively little elevational variation within the Everglades, differences in elevation as small as 12 in (30 cm) can result in very different plant community and habitat characteristics. Single rainfall events in the region can deposit greater than 12 in (30 cm) of rain within a short period, and the variability in elevation and vegetation characteristics is critical to provide refugia for sparrows under these adverse conditions.

Diet

While detailed information about the diet of sparrows is not known, invertebrates comprise the majority of their diet, though sparrows may also consume seeds when they are available (Werner 1975, p. 124; Post and Greenlaw 1994, p. 5). Howell (1932, p. 463) identified the contents of 15 sparrow stomachs and found remains primarily of insects and spiders, as well as amphipods, mollusks, and plant matter. Primary prey items that are fed to nestlings during the breeding season include grasshoppers (Orthoptera), moths and butterflies (Lepidoptera), dragonflies (Odonata), and other common large insects (Post and Greenlaw 1994, p. 5; Lockwood *et al.* 1997, p. 726). Adult sparrows probably consume mainly the same species during the nesting season. Sparrows may consume different proportions of different species over time and among sites, suggesting that they are dietary generalists (Pimm *et al.* 2002, p. 23). During the non-breeding season, preliminary information from evaluation of fecal collections suggests that a variety of small invertebrates, including weevils and small mollusks, are regularly consumed (Dean and Morrison 2001, p. 54). Evidence of seed consumption was only present in four percent of samples (Dean and Morrison 2001, p. 54). These non-breeding season samples may not be representative of the foods most frequently consumed during that season and may only represent a portion of the items ingested.

While the sparrow appears to be a dietary generalist, an important characteristic of sparrow habitat is its ability to support a diverse array of insect fauna. In addition, these food items must be available to sparrows both during periods when there is dry ground and during extended periods of inundation. The specific foraging substrates used are unknown, but they probably vary throughout the year in response to hydrologic conditions.

Sites to Support Foraging, Nesting, and Sheltering

Sparrows maintain territories that support all aspects of their life history (Werner and Woolfenden 1983, p. 67) and sparrows are completely reliant on the vegetation, like muhly grass, within their home ranges for foraging, nesting, and sheltering. Vegetation must also be sufficient to support them during extreme hydrologic conditions. Favorable vegetation characteristics are essential to the sparrow's survival and conservation.

During the dry portion of the year (December to May), when water levels are near or below ground surface, vegetation must be sufficiently dense to provide cover from potential predators like raptors and small mammalian predators, as well as for concealing nests. Sparrows most commonly move across the ground's surface. During the dry portion of the breeding season (March to May), sparrows build nests above the ground but relatively low in the vegetation (6.7 to 7.1 inches (17 to 18 cm) above the ground; Lockwood *et al.* 2001, p. 278).

During the wet portion of the year (June to November), the majority of or the entire ground surface may be inundated for extended periods. During these periods, the vegetation within a sparrow's home range serves as the substrate for sparrows, and they travel over and through it. Vegetation must be sufficiently dense and tall such that it can support the weight of sparrows as they move through it. In addition, it must provide cover and escape refugia in the structure of the plants from predators. Vegetation must also be sufficiently dense to support nests above the water. During the wet portion of the sparrow breeding season (June to August), sparrows build their nests higher in the vegetation than during dry periods, an average of 8.3 in (21 cm) above the ground surface (Lockwood et al. 2001, p. 278). Even at the nest height, there must be sufficient height and density of vegetation to cover and conceal nests.

Vegetation must provide sufficient diversity and structure to provide foraging opportunities for sparrows. The birds must be able to find and capture insect prey both during periods when the ground is dry and when the area is inundated. Seeds that are consumed during the wet season must be gleaned from standing vegetation since any seeds on the ground are covered by water and periphyton and are inaccessible to sparrows.

Hydrologic Regime

Hydrologic conditions have significant effects on sparrows both directly and indirectly. First, depth of inundation within sparrow habitat is directly related to the sparrow's ability to move, forage, nest, and find shelter and cover from predators and harsh environmental conditions. At some extreme water levels, such as those that occurred within some areas of sparrow habitat in October 1995, when water levels were more than 2 ft. (0.6 m) above ground surface, even the majority of the vegetation in sparrow habitat is completely inundated, leaving sparrows with few refugia. Conditions such as these may result in significant impacts to sparrow survival, and if they occur during the breeding season, these water levels will cause flooding and loss of sparrow nests (Nott *et al.* 1998, p. 31; Pimm and Bass 2002, p. 416). Even more moderate water levels, around 6 in. (15 cm) above ground surface, may sufficiently inundate some habitat such that sparrows are incapable of finding shelter and moving around within limited areas. These water levels, when they occur during sparrow nesting season, result in increased rates of nest failure due to depredation (Lockwood *et al.* 1997, p. 724).

The hydrologic regime also affects sparrows indirectly through its effects on the vegetation community. Persistent increases in hydroperiod may quickly result in changes in vegetation communities from marl prairies or mixed prairies to sawgrass-dominated communities resembling sawgrass marshes (Nott *et al.* 1998, p. 30). Average hydroperiods that extend beyond 210 days per year generally result in sawgrass marsh communities (Ross *et al.* 2006, p. 14).

Conversely, areas that are subjected to short hydroperiods generally have higher fire frequency than longer-hydroperiod areas (Lockwood *et al.* 2003, p. 464; Ross *et al.* 2006, p. 43), and are readily invaded by woody

shrubs and trees (Werner 1975, p. 204; Davis *et al.* 2005, pp. 824–825). Both an increased incidence of fire and an increased density and occurrence of shrubs detract from the suitability of an area as sparrow habitat.

The plant species composition and density in the Everglades are largely influenced by hydroperiods. Hydroperiods that range from 60 to 270 days support the full variety of vegetation conditions that are generally suitable for sparrows (Ross *et al.* 2006, p. 14), though the vegetation composition and structure may vary significantly within this range.

Soils

The soils that underlie sparrow habitat are composed almost entirely of calcitic marl. These soils are not rich in organic matter and are formed when periphyton mats precipitate calcite (Davis *et al.* 2005, p. 825). In areas where hydroperiods are short, periphyton mats do not form, and marl soil accretion is slow, resulting in shallow soils (sometimes less than 0.8 in. (2 cm)) that do not support dense plant growth. The vegetation community within the marl prairies is uniquely associated with marl soils (Davis *et al.* 2005, p. 825) and does not occur on other soil series, though individual plant species that occur in marl prairies may occur in other conditions.

The short hydroperiods within these marl prairie communities also result in oxidation of organic matter or consumption of organic matter during fires. Sawgrass marsh plant communities may become established in areas with longer hydroperiods that usually contain organic peat soils that dry less frequently than marl prairies (Ross *et al.* 2006, p. 10; Ogden 2005, p. 813). Marl soils, and particularly deeper marl soils formed through continuous deposition of calcitic sediments from periphyton, support the density and diversity of plant species upon which sparrows rely. While similar vegetation may occasionally occur over peat soils with a surficial periphyton layer, these areas may not support sparrow habitat in the long term because they may tend to succeed toward sawgrass marsh vegetation under long hydroperiods, or they may be significantly altered when fires consume underlying peats during dry conditions.

Primary Constituent Elements for the Cape Sable Seaside Sparrow

Based on the above discussion of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the Cape Sable seaside sparrow's PCEs consist of:

(1) Calcitic marl soils characteristic of the short-hydroperiod freshwater marl prairies of the southern Everglades.

(2) Herbaceous vegetation that includes greater than 15 percent combined cover of live and standing dead vegetation of one or more of the following species (when measured across an area of greater than 100 feet^2 per 30.5 meters^2): Muhly grass (*Muhlenbergia filipes*), Florida little bluestem (*Schizachyrium rhizomatum*), black-topped sedge (*Schoenus nigricans*), and cordgrass (*Spartina bakeri*).

(3) Contiguous open habitat. Sparrow subpopulations require large, expansive, contiguous habitat patches with few or sparse woody shrubs or trees.

(4) Hydrologic regime such that the water depth, as measured from the water surface down to the soil surface, does not exceed 7.9 inches (20 cm) during the period from March 15 to June 30 at a frequency of more than 2 out of every 10 years.

The above PCEs describe: (1) Soils that are widespread in the Everglades short-hydroperiod marshes and support the vegetation types that the sparrows rely on; (2) plant species that are characteristic of sparrow habitat in a variety of hydrologic conditions, that provide structure sufficient to support sparrow nests, and that comprise the substrate that sparrows utilize when there is standing water; (3) contiguous open habitat because sparrows require large, expansive, contiguous habitat patches with sparse woody shrubs or trees; (4) hydrologic conditions that would prevent flooding sparrow nests, maintain hospitable conditions for sparrows occupying these areas, and generally support the vegetation species that are essential to sparrows; and (5) overall, the habitat features that support the invertebrate prey base the sparrows rely on and the variability and uniqueness of habitat that provides, for example, periphyton mats for sparrows to survive in the southern Everglades.

This proposed designation is designed for the conservation of those areas containing PCEs necessary to support the life history functions that were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Criteria Used To Identify Critical Habitat

We are proposing to designate revised critical habitat on lands that were determined to be occupied at the time of listing and that contain sufficient PCEs to support life history functions essential to the conservation of Cape Sable seaside sparrows. In addition, we are proposing to designate areas that were identified as occupied after listing and that we have determined to be essential to the conservation of the sparrow.

An area is considered for designation as critical habitat when it supports some portion of a subpopulation of Cape Sable seaside sparrow and meets either of the following criteria: (1) Possesses one or more of the PCEs and was occupied at the time of listing by sparrows, or (2) is determined to be currently occupied by the Cape Sable seaside sparrow through annual surveys conducted during the period 1981 to present and is essential to the conservation of the species. Those areas where sparrows were recorded from 1981 to present represent the areas that we are considering to be currently occupied.

Following the strategy outlined above, we began with records of sparrow occurrence recorded from comprehensive surveys conducted from 1981 to 2006 and identified all survey points where sparrows had been detected. These areas have consistently supported the core of the current sparrow subpopulations over a variety of conditions. In the variable environment of the Everglades wetlands, the size and distribution of the sparrow subpopulations may change in response to environmental conditions, fires, and other factors. In addition, the vegetation within these units may change in response to varying environmental conditions. These unit boundaries were delineated to provide sufficient area such that these subpopulations may continue to persist, even when taking into account some degree of vegetation change and changes in population size that may occur under adverse conditions.

Sparrow surveys were conducted in 1981 and each year from 1992 through present, but every survey point was not necessarily surveyed in every year. In addition, surveys cannot confirm the absence of sparrows from a survey

point. To address the tendency to underestimate the occurrence and distribution of sparrows that results from incomplete surveys and inability to reliably determine absence of sparrows, a survey point was considered to be occupied if a sparrow was recorded in at least one year during the period from 1981 to 2006.

The criteria we employed to delineate the boundaries consistently encompass the areas where sparrows have occurred, despite the fact that sparrows may not occur at every point within unit boundaries in every year. All subpopulations where sparrows currently occur were included in unit boundaries because flooding and the risk resulting from large fires (Lockwood *et al.* 2003, p. 467) makes, over time, several entire units unsuitable for sparrows for extended periods. When this occurs, maintaining suitable habitat that supports sparrows in other subpopulations is essential to ensure that the impacted units could be repopulated through immigration or through active management.

This proposed revised designation does not include all of the historical habitat areas that were occupied by the Cape Sable seaside sparrow. However, it includes the majority of the remaining freshwater marl prairies that currently support the sparrow population and portions of the *Spartina* marshes that support sparrows and reflects the communities that were historically occupied by the sparrow throughout its range. Such areas as dense sawgrass marshes, pine or cypress forests, and mangroves are not included in this proposed revised designation. We conducted field reconnaissance of some portions of the units and eliminated highly degraded sites, isolated fragments of potential habitat that were unlikely to contribute to the maintenance of the sparrow subpopulations, and areas where mangroves have recently encroached into marl prairie vegetation or where cypress trees are present, but not visible on aerial photographs. We believe the seven remaining, currently occupied areas presently contain essential habitat features or are essential to the conservation of the Cape Sable seaside sparrow and, therefore, we are proposing as revised critical habitat units for the sparrow. These seven units in total would result in an overall reduction of 40,918 ac (16,560 ha) in the total critical habitat acreage compared to the original critical habitat designation.

When determining proposed critical habitat boundaries, we made every effort to avoid including within the boundaries of the map contained within this proposed rule developed areas such as buildings, paved areas, and other structures that lack PCEs for the Cape Sable seaside sparrow. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or PCEs in adjacent critical habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement to minimize and mitigate the impacts on the species by the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. There are no areas within the proposed revised critical habitat boundaries for the Cape Sable seaside sparrow that have HCPs. The units represent mostly Federal and some State land. We will consider the economic impacts of this proposal, and may exclude some portion based on the results of this analysis (see Economic Analysis section).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain the PCEs and may require special management considerations or protection. As discussed here and below within the unit descriptions, we find that all of the PCEs in the areas of proposed revised critical habitat determined to be occupied at time of the Cape Sable seaside sparrow's listing (Units 1 and 2) may require special management considerations or protection due to threats to the species or its habitat (so do Units 3 through 7, although this finding is not necessary to propose them as critical habitat). Such management considerations or protection include: measures to prevent damaging hydrologic conditions, control of invasive exotic plant species, and measures to prevent anthropogenic fires from spreading through Cape Sable seaside sparrow habitat.

Proposed Critical Habitat Designation

We are proposing seven units as revised critical habitat for the Cape Sable seaside sparrow. The critical habitat units described below constitute our best assessment, at this time, of the areas determined to be occupied at the time of listing, that contain one or more of the PCEs, and that may require special management; and those additional areas that were not occupied at the time of listing but were found to be essential to the conservation of the Cape Sable seaside sparrow. We consider all units as currently occupied. The area proposed for designation as revised critical habitat differs significantly from the original 1977 designation. The critical habitat boundaries in the 1977 designation were based on section-township-range boundaries, and only delineated relatively large, general areas within which sparrows were known to occur at that time. Consequently, many areas originally designated were never Cape Sable seaside sparrow habitat, such as forested areas of Long Pine Key in Everglades National Park, dwarf cypress forests (also Everglades National Park), deep water slough communities, and agricultural areas. These areas, therefore, are not being proposed for inclusion in the revised critical habitat designation, and we have instead sought to accurately delineate only the specific areas that were important to sparrows in the proposed revision. Two of the seven critical habitat units in the proposed designation have been added since the original designation, based on an improved understanding of sparrow distribution and important sparrow habitat characteristics that has been developed since the 1977 designation. For further information on the changes from the original designation, see the descriptions of the individual units below.

The seven units proposed for designation as Cape Sable seaside sparrow critical habitat are: (1) Marl prairie habitats that support the main portion of sparrow subpopulation A within ENP and Big Cypress National Preserve (BCNP) that lie on the western side of Shark River Slough; (2) brackish cordgrass marshes and freshwater marl prairies that support a portion of sparrow subpopulation A within ENP and BCNP in the region known as the Stairsteps (for its jagged park boundary),

lying in the strip of prairie habitat between the coastal mangroves and the cypress forests of BCNP; (3) marl prairie habitats that support sparrow subpopulation B and lie exclusively within ENP in the vicinity of the Main Park Road, between Shark River Slough and Taylor Slough; (4) marl prairie habitat that supports sparrow subpopulation C within ENP along its eastern boundary in the vicinity of Taylor Slough; (5) marl prairie habitats that support sparrow subpopulation D within ENP and the State-owned Southern Glades Wildlife and Environmental Area to the east of Taylor Slough; (6) marl prairie habitats that support sparrow subpopulation E within ENP, along the eastern edge of Shark River Slough; and (7) marl prairies that support sparrow subpopulation F within the northern portion of ENP along its eastern boundary and lying to the east of Shark River Slough. Table 1 provides the area by unit determined to meet the definition of critical habitat for the Cape Sable seaside sparrow.

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR THE CAPE SABLE SEASIDE SPARROW

[Area estimates reflect all land within critical habitat unit boundaries. We made efforts to remove areas without PCEs.]

Critical habitat unit	Federal acres (hectares)	State acres (hectares)	Total acres (hectares)
1. Unit 1—subpopulation A marl prairies	59,892 (24,237)	0	59,892 (24,237)
2. Unit 2—subpopulation A cordgrass marsh	11,402 (4,614)	0	11,402 (4,614)
3. Unit 3—subpopulation B	39,053 (15,804)	0	39,053 (15,804)
4. Unit 4—subpopulation C	8,059 (3,261)	0	8,059 (3,261)
5. Unit 5—subpopulation D	833 (337)	9,867 (3,993)	10,700 (4,330)
6. Unit 6—subpopulation E	22,278 (9,016)	0	22,278 (9,016)
7. Unit 7—subpopulation F	4,958 (2,006)	0	4,958 (2,006)
Total	146,475 (59,275)	9,867 (3,993)	156,342 (63,268)

Below, we provide a brief description and rationale for each proposed unit of revised critical habitat for the Cape Sable seaside sparrow.

Unit 1: Subpopulation A Marl Prairies

Unit 1 consists of 59,842 ac (24,237 ha) of freshwater marl prairie. The boundary of the proposed unit overlaps the boundary of BCNP and ENP. Of the total acreage, 31,292 ac (12,663 ha) are within ENP, and 28,600 ac (11,574 ha) are within BCNP. The proposed unit is entirely outside of currently designated critical habitat.

This unit was first determined to support sparrows in the mid-1950s (Stimson 1956, p. 496), and at that time sparrows were widely distributed across much of the marl prairies. Their occurrence within the area was not monitored continuously over time, but intermittent surveys indicated their continuous presence in the area. Surveys in 1968, near the time of the sparrow's listing, indicated that extensive fires had reduced the number of sparrows in the area significantly (Stimson 1968, p. 867), though they likely continued to occur scattered throughout the area within unburned patches (Werner 1975, p. 30). Since that time, the sparrow population in the area increased, and in the first comprehensive survey of potential sparrow habitat in 1981, the area was found to support a larger number of sparrows than any other subpopulation (Kushlan and Bass 1983, p. 144). Based on this information, we consider this unit to be occupied at the time of the Cape Sable seaside sparrow's listing.

This area contains habitat features (one or more of the PCEs) that are essential to the conservation of the sparrow. It is the largest remaining contiguous patch of marl prairie habitat and has the potential to support a large population of sparrows similar to counts taken in prior surveys in the 1980s and 1990s. A 1999 review of sparrow biology conducted by the American Ornithologists' Union concluded that the best available means to reduce the risk of extinction of the sparrow is to retain and recover sparrow subpopulation A (Walters *et al.* 2000, p. 1111).

The unit's spatial separation from the other areas occupied by sparrows increases its significance to the species. It is the only area west of Shark River Slough that can support a large sparrow subpopulation. Its distance from other sparrow subpopulations and the intervening slough make it unlikely to be affected by any large fire that impacts the subpopulations east of Shark River Slough, and less likely to be subjected to any local detrimental hydrologic conditions that may affect the eastern subpopulations, either as a result of hydrologic management or meteorological events. Conversely, its separation from other subpopulations reduces the likelihood that it would be recolonized if local extirpation were to occur (Walters *et al.* 2000, p. 1110). While the vegetation within portions of the habitat has been impacted by fires and flooding, it has consistently supported the vegetation species composition and structure that sparrows require.

From 1993 to 1995, the sparrow population in this area declined precipitously, from an estimated 2,608 individuals in 1992 to 240 individuals in 1995 (Pimm *et al.* 2002, p. 70). This decline apparently resulted from hydrologic management within the area immediately upstream of the area, just north of ENP. During these years, the sparrow habitat remained flooded for extended periods, sometimes deeply flooded. Since then, measures have been implemented by the U.S. Army Corps of Engineers and South Florida Water Management District water managers to prevent further damage to the sparrow subpopulation in the area resulting from excessive water levels and duration of inundation, but the subpopulation has not recovered. Water management plans continue to have the potential to result in damage to sparrow habitat in these areas, and special management of hydrologic conditions is necessary. Special management may also be needed to restore more favorable vegetation conditions within this unit.

Unit 2: Subpopulation A Cordgrass Marshes

Unit 2 consists of 11,402 ac (4,614 ha) of mixed cordgrass marsh and freshwater marl prairies within the coastal prairies between the mangrove zone and the cypress forests in the vicinity of BCNP in the Stairsteps region. Of the total acreage within this unit, 6,004 ac (2,430 ha) are within

BCNP, and the remaining 5,398 ac (2,184 ha) are within ENP. The proposed unit is entirely outside of currently designated critical habitat.

This unit was first determined to support sparrows in the mid-1950s (Stimson 1956, p. 498), and at that time, sparrows were distributed through much of the coastal marshes from Shark River Slough to the northwest to Ochopee. Their occurrence within the area was not monitored regularly over time, but intermittent surveys indicated their continuous presence in the area. Surveys in 1968, near the time of the sparrow's listing, indicated that fires that occurred in 1962 had reduced the number of sparrows in the area (Stimson 1968, p. 867), though they likely continued to occur throughout the area within unburned patches (Werner 1975, p. 30). Based on this information, we consider this unit to be occupied at the time of the Cape Sable seaside sparrow's listing.

This area contains habitat features (one or more of the PCEs) that are essential for the conservation of the sparrow. It is the only remaining large area of suitable habitat within the cordgrass marsh—marl prairie transitional zone that sparrows historically occupied. Since the 1981 surveys, the area has not supported large numbers of sparrows (Pimm *et al.* 2002, p. 70), but it has not been regularly surveyed. Because the vegetation in this area differs from that in the remainder of the proposed critical habitat, its condition and suitability is influenced by a different set of factors than in other units. The area is considered to be a portion of sparrow subpopulation A, but it is relatively isolated from the rest of the area supporting this subpopulation. This area may serve as a refugium for some sparrows and a source of birds for recolonization of the remainder of subpopulation A if large portions of the area were to be affected by large fires or damaging hydrologic conditions.

Mangrove and shrub encroachment has occurred in some portions of the coastal prairie habitats, and this area may require special management consideration (see Special Management Considerations and Protection section above).

Unit 3: Subpopulation B

Unit 3 consists of 39,053 ac (15,804 ha) of marl prairie and lies exclusively within ENP. The majority of the proposed unit lies within currently designated critical habitat. The unit is bounded on the south by the long-hydroperiod *Eleocharis*-dominated wet prairie and mangrove zone just inland of Florida Bay, on the west by the sawgrass marshes and deepwater slough communities of Shark River Slough, on the north by the pine rockland vegetation communities that occur within ENP on Long Pine Key, and on the east by the sawgrass marshes and deepwater slough vegetation community of Taylor Slough. There is a continuous elevational gradient across the site, from the high elevations of the pine rocklands north of the unit down to the mangroves in the south. The area is bisected by the Main Park Road, which serves as the primary public access route from Homestead to Florida Bay. It is also bisected by the Old Ingraham Highway, which is an abandoned and partially restored roadway that historically provided access from Homestead to the Bay. Much of the western portion of this roadway was removed and restored to grade, but the eastern portions of the road, with its associated borrow canal and woody vegetation, interrupt the contiguity of the prairies within the eastern portion of this unit. Besides the road, borrow canal, and woody vegetation, which are not critical habitat, the area consists of one large, contiguous expanse of marl prairie that contains the PCEs for the sparrow.

This unit was not known to be occupied at the time the sparrow was listed in 1967, but sparrows were documented in this area in 1974 to 1975 (Werner 1975, p. 32). Consequently, we consider the unit to be unoccupied at the time of listing. However, when sparrows were first recorded in the area during 1974 to 1975 surveys, they were abundant and widespread (Werner 1975, pp. 32–33) and almost certainly occurred in the area prior to their discovery. This area was included in the 1977 critical habitat designation for the sparrow (42 FR 40685 and 42 FR 47840).

The area is essential to the conservation of the sparrow because it is the largest contiguous patch of marl prairie east of Shark River Slough. It is currently occupied, and has consistently supported the largest sparrow subpopulation since 1992 (Pimm *et al.* 2002, p. 70; Pimm and Bass 2006, p. 16). The natural characteristics of this area make it relatively immune to risk of flooding or frequent fires (Walters *et al.* 2000, p. 1110). Its location south of the high-elevation pine rocklands provides it a degree of protection from high water levels that does not occur within any other units. Within the southern portion of the greater Everglades watershed, water flows from north to south, with most water moving through Shark River Slough, and to a lesser extent through Taylor Slough. The pinelands block the southward flow of water across this area such that the primary influences on water levels are rainfall and overflow from the flanking sloughs. In addition, portions of the area occur on relatively high elevations and remain relatively dry. Consequently, this area is not easily flooded as a result of managed water releases or upstream events, and the high water levels that may occur within other sparrow subpopulations are dampened by its relative position and topographic characteristics.

Similarly, the area is not particularly vulnerable to fires. It is not overdrained as a result of local hydrologic management actions, and the fire frequency is primarily influenced by natural ignition and managed prescribed fire. The public road that traverses the area could result in an increased likelihood of ignitions, but this has not occurred to date. In addition, the presence of both the Main Park Road and the Old Ingraham Highway within this unit provides human access greater than in any other unit and may allow better opportunities to manage both prescribed fires and wildfires such that they would pose a reduced risk to the persistence of the sparrow subpopulation.

Unit 4: Subpopulation C

Unit 4 consists of 8,059 ac (3,261 ha) of marl prairie habitat that lies exclusively within ENP in the vicinity of Taylor Slough, along the eastern edge of ENP. The proposed unit lies entirely within the currently designated critical habitat.

The unit consists of the prairies that flank both sides of the relatively narrow Taylor Slough. The area is bordered by the pine rocklands of Long Pine Key on the west and by isolated pine rocklands and the L–31 W canal that runs along the ENP boundary to the east. It is bordered by an area of constriction in Taylor Slough that is closely flanked on both sides by forested habitats at the southern end and by the Rocky Glades, a region of thin marl soils and exposed limestone and sparse vegetation (ENP 2005, p. 4), to the north. The area is bisected by Main Park Road in the southern portion of the unit, but the remainder of the unit consists of contiguous marl prairies.

This area was not known to be occupied at the time of listing in 1967, but sparrows were discovered in the area in 1972 (Ogden 1972, p. 852). We are consequently considering the unit to be unoccupied at the time of listing. At the time of discovery, sparrows were found to be widely distributed and abundant in this area (Werner 1975, p. 32), and it was likely occupied for many

years prior to its discovery. Following its discovery, the site was the location of some of the first intensive study of the sparrow's biology and its relationship to its habitat (Werner 1975, p. 17). This area was included in the 1977 critical habitat designation for the sparrow (42 FR 40685 and 42 FR 47840).

During the mid-1970s, sparrows were abundant at this site (Werner 1975, p. 32), and surveys in 1981 estimated 432 sparrows in this area (Pimm *et al.* 2002, p. 70). Since 1981, the sparrow subpopulation at this site has declined and has ranged from zero to 144 sparrows between 1995 and the present (Pimm *et al.* 2002, p. 70; Pimm and Bass 2006, p. 16). When sparrows were abundant in the area, the area was in a relatively dry condition, and water levels only rose above ground level for limited periods. Beginning in 1980, a pump station, which was installed along the eastern boundary of ENP at the approximate location of the historic slough, was operated to increase hydroperiods in the area resulting in extended hydroperiods within the portions of the area downstream from the pumping station (ENP 2005, p. 39). Vegetation changed in this area from marl prairie to sawgrass marsh (ENP 2005, pp. 3–40), and sparrows ceased to occur in this area. At the same time, the northern portions of sparrow subpopulation C, above the pump station, continued to be overdrained as a result of the adjacent canal and a lowered water table in the agricultural lands immediately adjacent to ENP (Johnson *et al.* 1988, pp. 30–31; ENP 2005, p. 53). In these overdrained areas, frequent fires impacted the habitat and resulted in reduced sparrow numbers (Pimm *et al.* 2002, p. 77).

This area is essential for the conservation of the sparrow because it provides a contiguous expanse of habitat that is largely separated from other nearby subpopulations in an area that is uniquely influenced by hydrologic characteristics. The Taylor Slough basin is a relatively small system, and much of the headwaters of the Slough are cut off by canals and agricultural development to the east of ENP. Portions of this unit near the slough have deep soils (15.7 in (40 cm)) (Taylor 1983, pp. 151–152) and support resilient vegetation that responds rapidly following fire (Taylor 1983, p. 151–152; Werner and Woolfenden 1983, p. 62). Sparrows were reported to reoccupy burned sites in this region within 1 to 2 years following fire (Werner and Woolfenden 1983, p. 62). The unit contains the vegetation characteristics upon which sparrows rely, and most of the area currently experiences hydrologic conditions that are compatible with sparrows (one or more of the PCEs). This area remains heavily influenced by hydrologic management along the eastern boundary of ENP (ENP 2005, p. 17–18). Portions of the area are also overdrained, resulting in the possibility of high fire frequency.

The location of this unit relative to other sparrow subpopulations is also significant in that it occurs in the center of the five sparrow subpopulations that occur east of Shark River Slough in the vicinity of Taylor Slough (subpopulations B through F). The habitat in this area probably plays an important role in supporting dispersal among the eastern subpopulations, acting as a ''hub'' that facilitates dispersal in the region and recolonization of local areas that are detrimentally impacted.

Unit 5: Subpopulation D

Unit 5 consists of 10,700 ac (4,330 ha) of marl prairie vegetation in an area that lies on the eastern side of the lower portion of Taylor Slough. A portion of the proposed unit is within currently designated critical habitat.

The majority of this area (9,867 ac; 3,993 ha) is within the Southern Glades Wildlife and Environmental Area, which is jointly managed by the South Florida Water Management District and the FWC. The remaining 883 ac (337 ha) occurs within the boundary of ENP. The area is bordered on the south by the long-hydroperiod *Eleocharis* vegetation and mangroves that flank Florida Bay, on the west by the sawgrass marshes and deep-water vegetation of Taylor Slough, on the east by longer-hydroperiod *Eleocharis* vegetation and overdrained areas with shrub encroachment in the vicinity of U.S. Highway 1, and on the north by agricultural lands and development in the vicinity of Homestead and Florida City.

Similar to the other eastern subpopulations, sparrows were not known to occur in this area at the time of listing in 1967, but were discovered during surveys from 1972 to 1975 (Werner 1975, p. 32). We consequently consider this proposed unit to be unoccupied at the time of listing. However, when sparrows were discovered in this area, they were widespread (Werner 1975, p. 32), suggesting that they had occurred in this region for a long period prior to their discovery. A portion of this area, including both Federal- and State-owned lands was included in the 1977 critical habitat designation for the sparrow (42 FR 40685 and 42 FR 47840).

This area is essential for the conservation of the sparrow because it is the easternmost area where sparrows occur and is the only subpopulation that occurs on the eastern side of Taylor Slough. It is consequently unlikely to be affected by the same factors (*e.g.*, large fires or extreme hydrologic conditions) that affect the other eastern subpopulations that lie primarily between Shark River Slough and Taylor Slough. Loss of suitable habitat and the sparrow subpopulation within this area would also result in a reduction in the geographic range of the sparrow.

The 1981 comprehensive survey of potential sparrow habitat estimated 400 sparrows within this region (Pimm *et al.* 2002, p. 70). This was higher than any number of sparrows recorded in the area in recent years, and estimates have ranged from zero to 112 sparrows between 1992 and the present (Pimm *et al.* 2002, p. 70; Pimm and Bass 2006, p. 16). The area currently contains all PCEs, but the majority of the area is dominated by sawgrass, which indicates a wetter-than-average condition within the spectrum of conditions that support marl prairie and sparrow habitat (Ross *et al.* 2006, p. 16). The habitat in this area is divided by several canals that are part of the C–111 basin. This canal system results in relatively altered hydrologic conditions in the region (ENP 2005, p. 18) and causes extended hydroperiods during wet periods (Pimm *et al.* 2002, p. 78). These factors influencing hydrologic conditions will continue to require management in the future.

Unit 6: Subpopulation E

Unit 6 consists of 22,278 ac (9,016 ha) of marl prairie habitat in an area that lies along the eastern margin of Shark River Slough. This unit occurs entirely within ENP, and the majority of the proposed unit is within currently designated critical habitat. The area is bordered to the south by the pine rocklands of Long Pine Key and by an area dominated by dwarf cypress trees. The sawgrass marshes and deepwater slough vegetation communities of Shark River Slough comprise the western and northern boundary of the area, and the Rocky Glades comprise the eastern boundary.

Similar to the other eastern subpopulations, sparrows were not known to occur in this area at the time of listing in 1967, but were discovered during surveys from 1972 to 1975 (Werner 1975, p. 32). We consequently consider this proposed unit to be unoccupied at the time of listing. However, when sparrows were discovered in this area, they were

relatively widespread (Werner 1975, p. 33), suggesting that they had occurred in this region for a long period prior to their discovery. The majority of this area was included in the 1977 critical habitat designation for the sparrow (42 FR 40685 and 42 FR 47840). This area is currently occupied by sparrows and contains one or more of the PCEs.

This area is essential to the conservation of the species because it supports one of the large, relatively stable sparrow subpopulations. It is also centrally located among the areas supporting other subpopulations, and its central location probably plays an important role in aiding dispersal among subpopulations, particularly movements from the eastern subpopulations to the subpopulations west of Shark River Slough. Since 1997, this area has supported the second largest sparrow subpopulation, ranging from 576 to nearly 1,000 individuals in recent years (Pimm *et al.* 2002, p. 70; Pimm and Bass 2006, p. 16).

The centrality of this subpopulation also helps to prevent it from being affected by managed hydrologic conditions because it is distant from canals, pumps, and water management structures that occur along the boundaries of ENP. The magnitude of any managed water releases is generally dampened by the time their influences reach this area. However, the proximity of this area to Shark River Slough may make the habitats and the sparrows that they support vulnerable to hydrologic effects during wet periods. The western portions of the area may become too deeply inundated to provide good habitat for sparrows under some deep water conditions. Large-scale hydrologic modifications, such as those proposed under the Comprehensive Everglades Restoration Plan, have the potential to influence habitat conditions in this area, and may require special management attention. Large-scale fires may also detrimentally affect this area, and there are no intervening features in the region that would aid in reducing the potential impacts on this subpopulation. While the area is relatively distant from ENP boundaries and potential sources of human-caused ignition, fires that are started along the eastern ENP boundary may rapidly spread into the area. The 2001 Lopez fire was a human-caused fire that affected a portion of this unit (Lockwood *et al.* 2005, p. 4). Risk from fire may also require management in this area to prevent impacts to this large sparrow subpopulation.

Unit 7: Subpopulation F

Unit 7 consists of 4,958 ac (2,006 ha) of marl prairie that lies along the eastern boundary of ENP, and is the northernmost of the units east of Shark River Slough. This is the smallest of the proposed units and the majority of the proposed unit is within currently designated critical habitat. It is bounded on the north and west by the sawgrass marshes and deep-water slough vegetation communities associated with Shark River Slough, and on the east by agricultural and residential development and the boundary of ENP. Its southern boundary is defined by the sparse vegetation and shallow soils of the Rocky Glades.

Similar to the other eastern subpopulations, sparrows were not known to occur in this area at the time of listing in 1967, but were discovered during surveys from 1972 to 1975 (Werner 1975, p. 32). We consequently consider this proposed unit to be unoccupied at the time of listing. However, when sparrows were discovered in this area, they were relatively widespread (Werner 1975, p. 33), suggesting that they had occurred in this region for a long period prior to their discovery. The majority of this area was included in the 1977 critical habitat designation for the sparrow (42 FR 40685 and 42 FR 47840). This area is currently occupied by sparrows, and contains one or more of the PCEs associated with sparrow critical habitat.

The first comprehensive surveys of potential sparrow habitat in 1981 resulted in an estimated population of 112 sparrows in this area, and most subsequent surveys have resulted in estimates lower than this, including several years when no sparrows were found (Pimm *et al.* 2002, p. 70; Pimm and Bass 2006, p. 16). However, sparrows were always found in the area in the year following a zero count (Pimm *et al.* 2002, p. 70), indicating that sparrows are consistently using the area.

This area is essential to the conservation of the sparrow because it would serve to support or recolonize subpopulations C and E (in units 4 and 6) if those areas were to become unsuitable. Loss of habitat in this area would also result in a reduction in the total spatial distribution of sparrows. Its position in the landscape results in a unique set of threats that differ from those in other subpopulations. Because of its proximity to urban and agricultural areas and its relative topographic location, this area has been consistently overdrained in recent years and remains dry for longer periods than other subpopulations. The relative dryness of the area may allow the site to remain suitable as habitat for sparrows under very wet conditions, when other subpopulations may become deeply inundated for long periods.

Because of its dryness and its proximity to developed areas, this area has been subjected to frequent human-caused fires during the past decade, resulting in periods of poor habitat quality. Management of fires in the area will continue to require special consideration. In addition, the dry conditions have allowed encroachment of woody vegetation, including invasive exotic and native woody species. Invasive exotic trees, primarily Australian-pine (*Casuarina* spp.), melaleuca (*Melaleuca quinquenervia*), and Brazilian pepper (*Schinus terebinthifolius*), have become established in local areas (Werner 1975, pp. 46–47), often forming dense stands. These trees have reduced the suitability of some portions of the habitat for sparrows and have reduced the amount of contiguous open habitat. Aggressive management programs have been implemented by management agencies to address this issue, and control of woody vegetation will continue to be required.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 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. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (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)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined 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 the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service,

to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is 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 proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion 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)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined 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, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Cape Sable seaside sparrow or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act 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 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Cape Sable Seaside Sparrow and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for Cape Sable seaside sparrow jeopardy analyses that relies heavily on the importance of subpopulations to the survival and recovery of the sparrow. The section 7(a)(2) analysis is focused not only on these subpopulations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the sparrow in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected subpopulation(s), inclusive of associated habitat conditions, a jeopardy finding for the species is warranted, because of the relationship of each subpopulation to the survival and recovery of the species as a whole.

Adverse Modification Standard

For the reasons described in the Director's December 9, 2004 memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of Cape Sable seaside sparrow critical habitat units is to support viable core area populations.

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 may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of the designated critical habitat for the sparrow is appreciably reduced.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the sparrow include, but are not limited to:

(1) Actions that would significantly and detrimentally alter the hydrology of marl prairie habitat found in all units. Such activities could include, but are not limited to, changes to hydrological management plans that result in increased depth of inundation or duration of flooding within sparrow habitat during the breeding season;

(2) Actions that would allow encroachment of nonnative and invasive woody plant species. Such activities could include, but are not limited, to local or regional overdrying and introduction of nonnative woody plant species;

(3) Actions that would significantly and detrimentally alter the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for nesting). Such activities could include, but are not limited to, off-road vehicle use and mechanical clearing;

(4) Actions that would reduce the value of a site by significantly disturbing sparrows from activities, such as foraging and nesting; and

(5) Actions that would significantly and detrimentally alter water quality that may lead to detrimental changes in vegetation species composition and structure or productivity of prey organisms and may have direct detrimental effects on sparrows.

These activities could reduce population sizes and the likelihood of persistence within one or more sparrow subpopulations, and reduce the suitability of habitat for breeding for extended periods.

We consider all of the units proposed as revised critical habitat to contain features essential to the conservation of the Cape Sable seaside sparrow or to be essential to the conservation of the Cape Sable seaside sparrow. All units are within the geographic range of the species, all areas are currently occupied by sparrows (based on surveys conducted since 1981; Pimm *et al.* 2002; Pimm and Bass 2006), and all areas are likely to be used by the sparrow. Federal agencies already consult with us on activities in areas currently occupied by the sparrow if the species may be affected by the activity to ensure that those Federal actions do not jeopardize the continued existence of the sparrow or destroy or modify its current designated critical habitat.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

The seven units we propose as revised critical habitat satisfy the definition of critical habitat under section 3(5)(A) of the Act because each is a specific area within the geographical area occupied by the Cape Sable seaside sparrow at the time of listing within which are found those physical and biological features that are essential to its conservation and that may require special management considerations or protection, or is an area not occupied by this species at the time of listing but is essential to the conservation of the sparrow (see ''Primary Constituent Elements,'' ''Criteria Used to Delineate Critical Habitat,'' and ''Special Management Considerations or Protection''). We considered whether conservation activity on publicly or privately managed lands within a proposed unit might remove the need for special management considerations or protection from all or part of a unit. All of the proposed revised critical habitat units fall within lands managed wholly or partially for conservation purposes. We considered excluding NPS lands and State-managed lands from the proposed critical habitat designation because these properties currently operate under general management plans (NPS) or conceptual management plans (FWC) that address habitat management for the sparrow. ENP and BCNP are currently drafting new General Management Plans, but they are not yet complete. While the existing management plans include provisions and actions intended to maintain the habitat type, we determined that none of the existing plans provide sufficient assurances that hydrologic management in these areas will maintain sparrow habitat. Neither the NPS nor the FWC directly manage the hydrologic conditions on their properties. Inflows into the properties, as well as adjacent hydrologic conditions that affect the lands through groundwater seepage, are regulated by other Federal and State agencies.

Under section 4(b)(2) of the Act, we must consider the economic impact and any other relevant impact of designating areas as critical habitat. We may exclude any area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of inclusion.

Benefits of Inclusion

The most direct benefit of critical habitat is that actions taken, authorized, or funded by the Federal government require consultation under section 7 of the Act to ensure that these actions are not likely to destroy or adversely modify critical habitat (see ''Effects of Critical Habitat Designation—Section 7 Consultation''). This regulatory benefit has two principal limitations. First, it applies only to Federal actions and not to other actions that may destroy or adversely modify critical habitat. Second, it ensures only that designated areas are not destroyed or adversely modified and does not require specific steps toward recovery.

Another benefit of critical habitat is that its designation serves to educate landowners, State and local governments, and the general public. By clearly delineating areas of high conservation value, designation may help focus and promote conservation efforts for the Cape Sable seaside sparrow. Designation informs State and Federal agencies and local governments about areas that they may consider for protection or conservation.

Benefits of Exclusion

Because the regulatory effect of critical habitat is limited to Federal actions, the non-economic impacts of critical habitat are generally limited to Federal lands, partnerships, and trust resources. We have determined that the lands encompassed by the proposed revised critical habitat units for the Cape Sable seaside sparrow are not owned or managed by the Department of Defense, there are currently no HCPs for the Cape Sable seaside sparrow, and the proposed revised designation does not include any Tribal lands. We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this revised critical habitat designation as proposed.

Based on the best available information, we believe that the benefits of designating each of the seven units we propose as revised critical habitat outweigh the non-economic benefits of excluding any specific areas within those units. We will evaluate potential economic benefits of exclusion in a separate notice (see ''Economic Analysis'').

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the Cape Sable seaside sparrow is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/verobeach*, or by contacting the South Florida Ecological Services Office directly (see **ADDRESSES**). For further explanation, see the Required Determinations section below.

Editorial Changes

This proposed rule incorporates a change to the common and scientific names of the Cape Sable seaside sparrow used in the current critical habitat entry for this species at 50 CFR 17.95(b). The current critical habitat entry, established by an August 11, 1977, final rule (42 FR 40685), uses the common name ''Cape Sable sparrow'' and the scientific name ''*Ammospiza maritima mirabilis*.'' Both names are outdated. Our proposed change will bring the common and scientific names into agreement with those used by the scientific community as well as names used for this species in the table at 50 CFR 17.11(h).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least five appropriate and independent specialists regarding the science in this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed revised designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We intend to schedule public hearings on this proposal, if any are requested, once the draft economic analysis is available so that we can receive public comment on the draft economic analysis and proposed rule simultaneously. However, we can schedule public hearings prior to that time, if specifically requested. We will announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. When it is completed, the draft economic analysis can be obtained from the internet Web site at *http://www.fws.gov/verobeach* or by contacting the South Florida Ecological Services Office directly (see **ADDRESSES**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effects will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

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 effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic

analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Cape Sable seaside sparrow is a significant regulatory action under Executive Order 12866, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), 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, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because only Federal and State lands are involved in the proposed designation. As such, a Small Government Agency Plan is not required. However, as we conduct our economic analysis, we will further evaluate this issue and, as appropriate, review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Cape Sable seaside sparrow in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Cape Sable seaside sparrow does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in Florida. The designation of critical habitat in areas currently occupied by the Cape Sable seaside sparrow imposes no additional restrictions to those currently in place and, therefore, has 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

In accordance with Executive Order 12988, 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 have proposed designating revised critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in

understanding the habitat needs of the Cape Sable seaside sparrow.

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. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA 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 assertion was upheld by 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 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. We have determined that there were no Tribal lands occupied at the time of listing and no Tribal lands contain unoccupied areas that are essential for the conservation of the Cape Sable seaside sparrow. Therefore, revised critical habitat for the sparrow has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from Tylan Dean, South Florida Ecological Services Office (see **ADDRESSES**).

Author(s)

The primary author of this package is the South Florida Ecological Services Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.95(b), revise the entry for ''Cape Sable Sparrow (*Ammospiza maritima mirabilis*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Cape Sable Seaside Sparrow (Ammodramus maritimus mirabilis)

(1) Critical habitat units are depicted for Miami-Dade and Monroe Counties, Florida, on the maps below.

(2) The primary constituent elements of critical habitat for the Cape Sable seaside sparrow are the habitat components that provide:

(i) Calcitic marl soils characteristic of the short-hydroperiod freshwater marshes of the southern Everglades;

(ii) Herbaceous vegetation that includes greater than 15 percent combined cover of live and standing dead vegetation of one or more of the following species (when measured across an area of greater than 100 feet^2 or 30.5 meters^2): Muhly grass (*Muhlenbergia filipes*), Florida little bluestem (*Schizachyrium rhizomatum*), black-topped sedge (*Schoenus nigricans*), and cordgrass (*Spartina bakeri*);

(iii) Contiguous open habitat. Sparrow subpopulations require large, expansive, contiguous habitat patches with few or sparse woody shrubs or trees; and

(iv) Hydrologic regime such that the water depth, as measured from the water surface down to the soil surface, does not exceed 20 centimeters during the period from March 15 to June 30 at a frequency of more than 2 out of every 10 years.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units. Data layers defining map units were created using a GIS and adding activity areas around all Cape Sable seaside sparrow point count survey coordinates provided by the National Park Service at which sparrows have been recorded since 1981. These activity areas were merged to form one large polygon, and the boundaries were further refined by delineating suitable sparrow habitat and excluding unsuitable habitat along the borders based on interpretation of 2004 Florida Digital Orthographic Quarter Quads and Landsat false-color satellite imagery (a mosaic of color-balanced Landsat 7 Enhanced Thematic Mapper scenes from December 2003 to April 2004 using bands 5, 4, and 3). The projection represented in all mapping of units is Universal Transverse Mercator (UTM) Zone 17 North, NAD 83 Datum.

(5) Unit 1: (Subpopulation A marl prairies.

(i) *General description:* Unit 1 consists of 59,892 ac (24,237 ha) of marl prairie habitat that lies within Everglades National Park and Big Cypress National Preserve in western Miami-Dade County and eastern Monroe County.

(ii) *Coordinates:* From the Shark Valley Lookout Tower USGS 1:24,000 quadrangle map, Florida, land and water bounded by the following UTM Zone 17 NAD 83 coordinates (E, N): 514143, 2846698; 516431, 2846561; 516824, 2846011; 516682, 2844068; 516594, 2841582; 516875, 2840873; 517488, 2840452; 517734, 2839419; 517673, 2838041; 517387, 2837426; 516650, 2837228; 516449, 2836800; 516540, 2835500; 516658, 2834795; 516098, 2834078; 514660, 2832924; 514076, 2832343; 513001, 2831639; 512839, 2830561; 512823, 2828209; 512043, 2827390; 511172, 2827222; 509898, 2827253; 508760, 2827281; 508159, 2827079; 508038, 2826568; 508013, 2825568; 508511, 2824880; 509868, 2824901; 511045, 2824251; 511198, 2823869; 511168, 2822653; 511121, 2821816; 510757, 2821338; 507478, 2821417; 507360, 2821015; 507021, 2820482; 506474, 2820279; 505878, 2820294; 505159, 2820852; 505149, 2821528; 504894, 2822210; 504136, 2822229; 503651, 2822376; 503427, 2823165; 502463, 2823675; 502423, 2825921; 502848, 2826694; 504152, 2826771; 504593, 2827085; 504532, 2827897; 504455, 2829197; 504000, 2829424; 503518, 2829679; 503534, 2830328; 503610, 2831218; 503664, 2832353; 503525, 2832735; 503102, 2833204; 501505, 2833324; 500560, 2833482; 500303, 2834029;

500297, 2834895; 500460, 2837135; 500875, 2837476; 502014, 2837476; 503043, 2837451; 503651, 2837896; 503936, 2838484; 504643, 2838548; 505407, 2838745; 505831, 2839465; 506329, 2839885; 506608, 2840176; 507187, 2840568; 508459, 2840483; 509299, 2840462; 509628, 2840589; 509703, 2841453; 509532, 2842241; 509275, 2842815; 508665, 2843343; 508548, 2844103; 509299, 2844896; 509556, 2845404; 510049, 2845608; 513381, 2845500; 513540, 2846442; 514143, 2846698.

(iii) **Note:** Map of Unit 1 is provided at paragraph (6)(iii) of this entry.

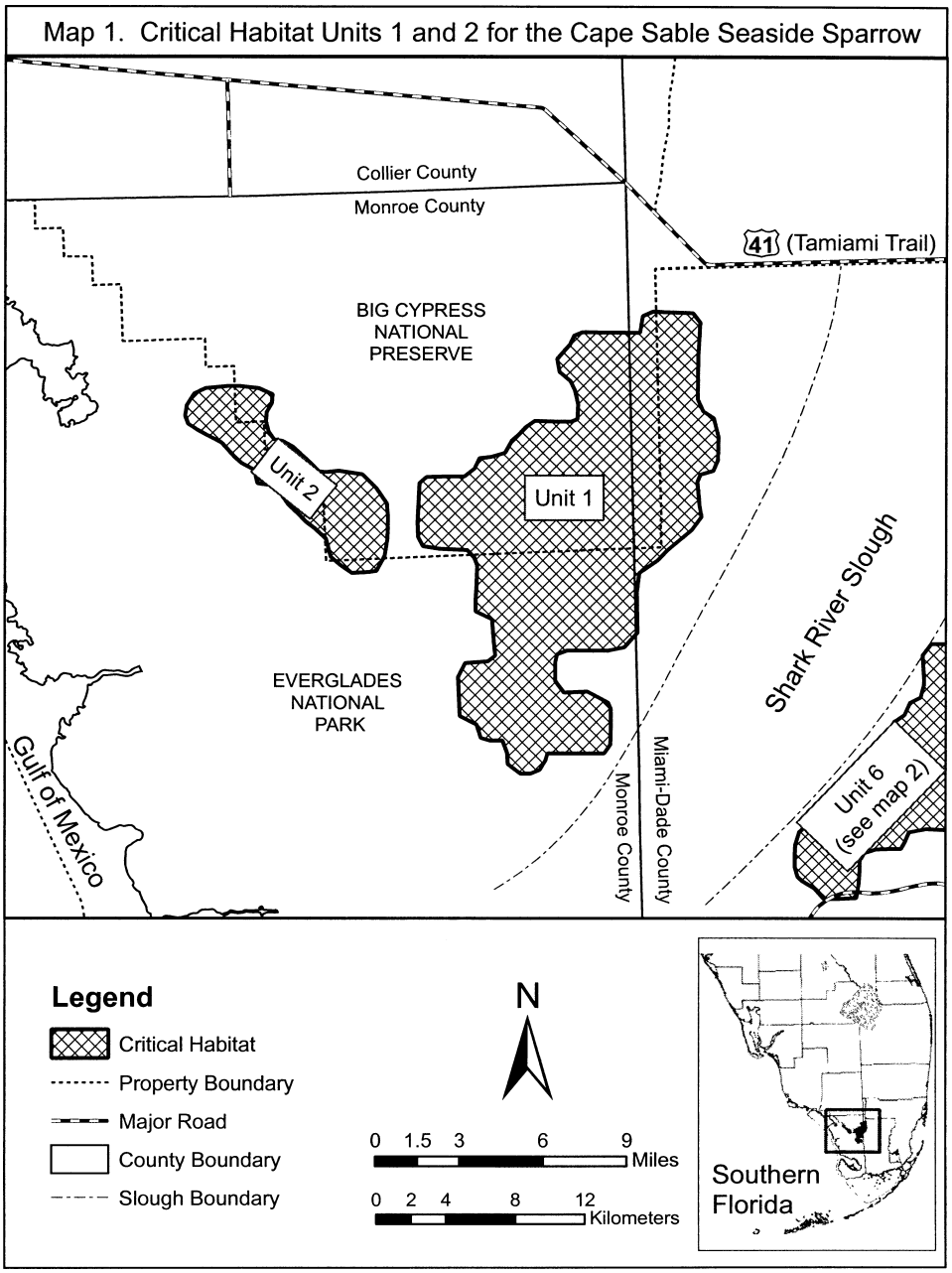
(6) Unit 2: Subpopulation A cordgrass marshes.

(i) *General description:* Unit 2 consists of 11,402 ac (4,614 ha) of mixed cordgrass marsh and freshwater marl prairie habitat that lies within Everglades National Park and Big Cypress National Preserve in western Miami-Dade County and eastern Monroe County.

(ii) *Coordinates:* From the Big Boy Lake USGS 1:24,000 quadrangle map, Florida, land and water bounded by the following UTM Zone 17 NAD 83 coordinates (E, N): 492105, 2842446; 492056, 2841913; 491748, 2841423; 491699, 2840927; 491850, 2840297; 492135, 2839848; 492631, 2839743; 493232, 2839379; 494098, 2838547; 494675, 2837925; 495173, 2837895; 495821, 2837953; 497182, 2837717; 497993, 2836868; 498545, 2836007; 498601, 2835269; 498531, 2833907; 498361, 2832990; 498167, 2832645; 497878, 2832136; 497396, 2832074; 496453, 2832042; 495799, 2832518; 495257, 2833010; 495006, 2834067; 494409, 2834615; 493847, 2835071; 493344, 2835636; 492857, 2836108; 492393, 2836801; 492033, 2837197; 491131, 2837348; 490947, 2838126; 490255, 2838530; 489785, 2838965; 489084, 2839756; 488227, 2840237; 487680, 2840545; 487225, 2840832; 487052, 2841334; 487160, 2841939; 487600, 2842592; 488273, 2842889; 489569, 2842986; 490215, 2842971; 491320, 2842815; 492105, 2842446.

(iii) **Note:** Map of Units 1 and 2 (Map 1) follows:

BILLING CODE 4310–55–P



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(7) Unit 3: Subpopulation B.

(i) *General description:* Unit 3 consists of 39,053 ac (15,804 ha) of marl prairie habitat that lies within Everglades National Park in southwestern Miami-Dade County.

(ii) *Coordinates:* From the Long Pine Key USGS 1:24,000 quadrangle map, Florida, land and water bounded by the following UTM Zone 17 NAD 83 coordinates (E, N): 526917, 2808910; 527089, 2808114; 527308, 2808109; 528319, 2808057; 528750, 2807801; 528903, 2807333; 529236, 2806425; 529691, 2806032; 530946, 2805892; 531630, 2805875; 532441, 2805501; 532453, 2804873; 531446, 2803970; 530870, 2803902; 530241, 2803890; 529854, 2803763; 529386, 2803611; 529182, 2803097; 529144, 2802662; 529296, 2802167; 529728, 2801965; 530138, 2801955; 530767, 2801940; 531394, 2801843; 531909, 2801666; 532314, 2801438; 532312, 2801384; 532262, 2800430; 531975, 2799918; 531693, 2799543; 531425, 2798649; 531410, 2798077; 531094, 2797430; 530664, 2796649; 530325, 2796193; 529846, 2795632; 529518, 2795640; 528557, 2795500; 528065, 2795485; 527787, 2795300; 527450, 2794981; 527006, 2794692; 526591, 2794511; 526017, 2794525; 525180, 2794982; 524802, 2795155; 523987, 2795393; 522696, 2796271; 522130, 2796639; 521206, 2796853; 520557, 2797169; 520072, 2797481; 519245, 2798319; 518416, 2799104; 517970, 2799879; 517793, 2800456; 517534, 2801062; 517266, 2801260; 516889, 2801515; 516474, 2802425; 516492, 2803162; 516515, 2804116; 516430, 2805100; 516586, 2805888; 517094, 2806530; 517680, 2807007; 517877, 2807248; 518159, 2807596; 518527, 2808078; 519049, 2808174; 520226, 2808227; 520856, 2808239; 521482, 2808115; 521938, 2807749; 522335, 2807194; 522567, 2806642; 522754, 2806447; 523349, 2806159; 523785, 2806121; 524093, 2806387; 524429, 2806706; 524846, 2806996; 525021, 2807428; 525305, 2807858; 525560, 2808206;

525406, 2808619; 525663, 2809050; 526296, 2809225; 526917, 2808910.

(iii) **Note:** Map of Unit 3 is provided at paragraph (11)(iii) of this entry.

(8) Unit 4: Subpopulation C.

(i) *General description:* Unit 4 consists of 8,059 ac (3,261 ha) of marl prairie habitat that lies within Everglades National Park in western Miami-Dade County.

(ii) *Coordinates:* From the Long Pine Key USGS 1:24,000 quadrangle map, Florida, land and water bounded by the following UTM Zone 17 NAD 83 coordinates (E, N): 534909, 2812258; 535011, 2812832; 535192, 2813089; 535650, 2813200; 536001, 2813209; 536491, 2813232; 536722, 2813349; 536766, 2813714; 536778, 2814185; 536928, 2814601; 537297, 2814644; 537496, 2814936; 537501, 2815128; 537809, 2815540; 538341, 2815806; 538763, 2815900; 539200, 2815890; 539689, 2815825; 540446, 2815981; 540831, 2815972; 541202, 2816120; 541312, 2811350; 541539, 2811327; 541579, 2810820; 541603, 2810365; 541542, 2810035; 541376, 2809690; 541211, 2809380; 541133, 2809067; 541108, 2808754; 541296, 2808574; 541238, 2808331; 541146, 2808159; 540844, 2807992; 540792, 2807993; 540634, 2807979; 540542, 2807824; 540538, 2807632; 540309, 2807586; 539756, 2807879; 539132, 2808138; 538618, 2808605; 538734, 2809056; 538901, 2809401; 539067, 2809781; 538637, 2810071; 538068, 2810417; 537342, 2810784; 536684, 2811114; 536178, 2811179; 535884, 2811326; 535598, 2811787; 535253, 2811988; 534909, 2812258;

(iii) **Note:** Map of Unit 4 is provided at paragraph (11)(iii) of this entry.

(9) Unit 5: Subpopulation D.

(i) *General description:* Unit 5 consists of 10,700 ac (4,330 ha) of marl prairie habitat that lies within the Southern Glades Wildlife and Environmental Area and Everglades National Park, in southern Miami-Dade County, as depicted on Map 2.

(ii) *Coordinates:* From the Royal Palm Ranger Station SE USGS 1:24,000 quadrangle map, Florida, land and water bounded by the following UTM Zone 17 NAD 83 coordinates (E, N): 546623, 2805929; 547722, 2805064; 547780, 2804591; 548184, 2804651; 548884, 2804634; 549599, 2804511; 550164, 2804008; 550253, 2803378; 549944, 2802896; 549549, 2802504; 549138, 2802148; 549024, 2801801; 549035, 2801539; 549039, 2800997; 549140, 2800122; 549122, 2799389; 548970, 2798904; 548373, 2798813; 547483, 2798958; 546821, 2799061; 545890, 2798962; 545532, 2798621; 545114, 2798003; 544479, 2797791; 543887, 2797946; 543689, 2798405; 543750, 2799468; 543726, 2799940; 543689, 2800535; 543343, 2800736; 542783, 2800715; 542331, 2800865; 541727, 2801212; 541556, 2801356; 541478, 2801759; 541479, 2802493; 541666, 2802977; 542234, 2803313; 542611, 2803670; 542775, 2803928; 543425, 2804034; 544003, 2804037; 544423, 2804027; 544605, 2804337; 544618, 2804843; 544595, 2805350; 544742, 2805626; 545170, 2805930; 545889, 2805999; 546623, 2805929.

(iii) **Note:** Map of Unit 5 is provided at paragraph (11)(iii) of this entry.

(10) Unit 6: Subpopulation E.

(i) *General description:* Unit 6 consists of 22,278 ac (9,016 ha) of marl prairie habitat that lies within Everglades National Park in central Miami-Dade County.

(ii) *Coordinates:* From the Pahayokee Lookout Tower USGS 1:24,000 quadrangle map, Florida, land and water bounded by the following UTM Zone 17 NAD 83 coordinates (E, N): 521841, 2816533; 525940, 2820239; 525968, 2820266; 526694, 2820741; 527084, 2820978; 527388, 2821080; 527374, 2821600; 527360, 2822148; 527457, 2822748; 527735, 2822906; 528070, 2823117; 528417, 2823848; 529028, 2824134; 529238, 2824841; 529250, 2825333; 529197, 2826539; 529735, 2827183; 530668, 2827160; 531953, 2826965; 532774, 2826835; 533193, 2826031; 533510, 2825530; 533777, 2825195; 534094, 2824694; 533885, 2824015; 533544, 2823558; 533230, 2823045; 533211, 2822307; 533415, 2821672; 533623, 2821174; 534292, 2820473; 534774, 2819968; 534844, 2819501; 535075, 2818811; 535283, 2818368; 534879, 2817556; 534463, 2817375; 533609, 2817259; 531442, 2817339; 530965, 2816913; 530377, 2816462; 529199, 2816545; 528179, 2816378; 527947, 2815864; 527689, 2815432; 527085, 2815447; 526289, 2815439; 525570, 2815237; 525284, 2814779; 525270, 2814177; 525195, 2813357; 525067, 2812648; 523941, 2812621; 523173, 2812640; 522612, 2813283; 521991, 2813682; 521696, 2813963; 521545, 2814542; 521562, 2815253; 521603, 2815772; 521841, 2816533.

(iii) **Note:** Map of Unit 6 is provided at paragraph (11)(iii) of this entry.

(11) Unit 7: Subpopulation F.

(i) *General description:* Unit 7 consists of 4,958 ac (2,006 ha) of marl prairie habitat that lies along the eastern boundary of Everglades National Park in central Miami-Dade County.

(ii) *Coordinates:* From the Grossman Hammock USGS 1:24,000 quadrangle map, Florida, land and water bounded by the following UTM Zone 17 NAD 83 coordinates (E, N): 541235, 2829890; 541864, 2829822; 542679, 2829488; 542727, 2827880; 542685, 2826187; 542780, 2825068; 542893, 2823965; 542791, 2823409; 542348, 2823192; 541263, 2823219; 540481, 2823430; 540440, 2823903; 539993, 2824245; 539241, 2824264; 538593, 2824996; 538791, 2825899; 539239, 2826324; 539702, 2827361; 539928, 2828001; 540356, 2829021; 540489, 2829454; 540691, 2829833; 541235, 2829890.

(iii) **Note:** Map of Units 3, 4, 5, 6, and 7 (Map 2) follows:

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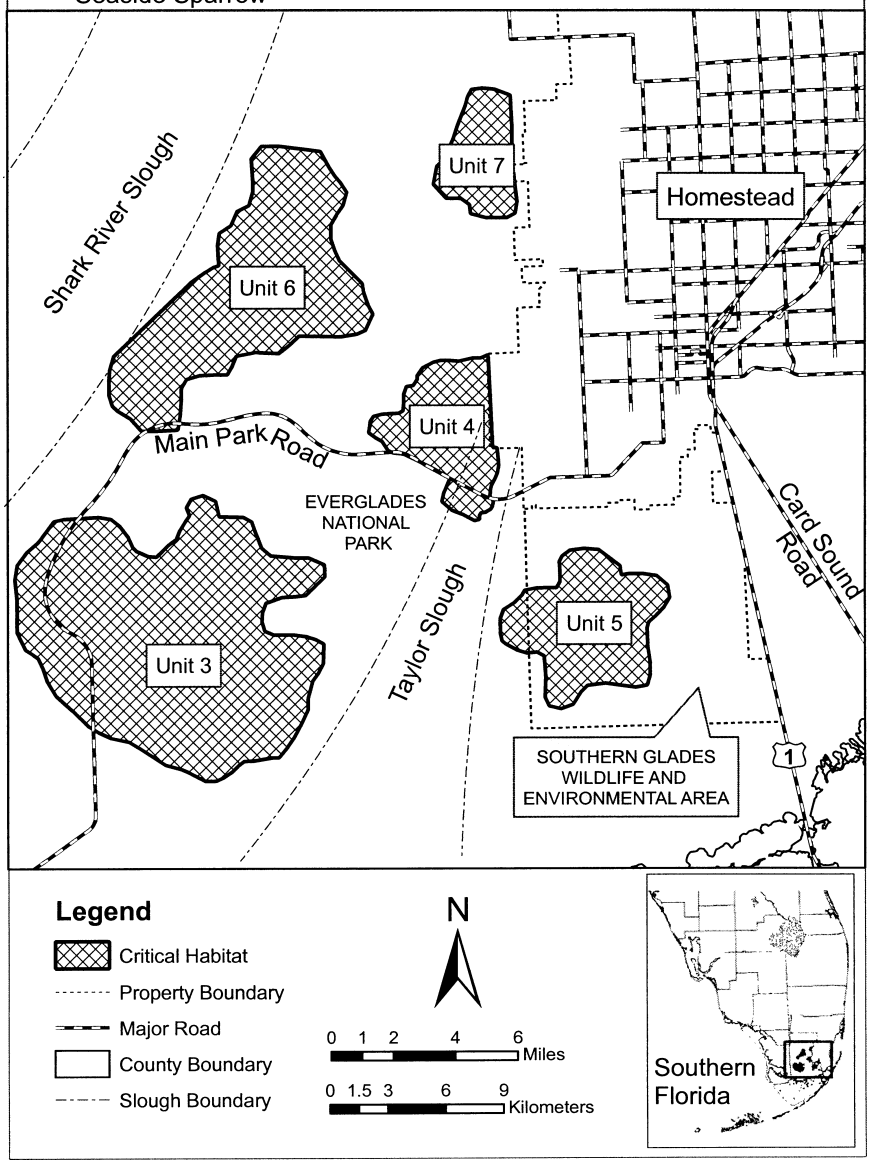
Map 2. Critical Habitat Units 3, 4, 5, 6, and 7 for the Cape Sable Seaside Sparrow



* * * * *

Dated: October 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8930 Filed 10–30–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
October 31, 2006

Part IV

Nuclear Regulatory Commission

10 CFR Parts 2, 30, et al.

Protection of Safeguards Information; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, and 150

RIN: 3150–AH57

Protection of Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for the protection of Safeguards Information (SGI) to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The amendments would affect certain licensees, information, and materials not currently subject to SGI regulations, but which are within the scope of Commission authority under the Atomic Energy Act of 1954, as amended (AEA). The NRC originally published a proposed rule on SGI on February 11, 2005 (70 FR 7196). The NRC is again publishing the proposed rule on SGI protection requirements in order to allow the public to comment on changes to the proposed rule text in response to public comment and to reflect amendments to the AEA in the Energy Policy Act of 2005 (EPAct) and Commission Orders issued to licensees authorized to possess and transfer items containing certain quantities of radioactive material.

DATES: The comment period expires January 2, 2007. Submit comments specific to information collection aspects of this rule January 2, 2007. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH57) in the subject line of your comments. Comments on this rulemaking submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove identifying information, the NRC cautions against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemaking and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher at (301) 415–5905; e-mail: *cag@nrc.gov.* Comments can also be submitted via the Federal Rulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone: (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101. Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area 01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be reviewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/ NRC/ADAMS/ index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Marjorie Rothschild, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1633, e-mail *MUR@nrc.gov* or Bernard Stapleton, Office of Nuclear Security and Incident Response, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2432, e-mail *BWS2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Need for Rule
III. Purpose of Rulemaking
IV. Discussion
A. Overview of Public Comments on the Original Proposed Rule
B. Comments and Issues
1. Comments in Response to Specific Request for Comments
2. General Issues
3. Section-Specific Comments
C. Section-by-Section Analysis
D. Request for Specific Comment
V. Criminal Penalties
VI. Agreement State Issues
VII. Voluntary Consensus Standards
VIII. Finding of No Significant Impact: Environmental Assessment
IX. Paperwork Reduction Act Statement
X. Regulatory Analysis
XI. Regulatory Flexibility Certification
XII. Backfit Analysis

I. Background

The NRC first published proposed amendments to its rules in parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, 150 governing the handling of Safeguards Information and creating a new category of protected material, Safeguards Information-Modified Handling on February 11, 2005 (70 FR 7196). Subsequently, Congress passed the Energy Policy Act of 2005 (EPAct), Pub. L. No. 109–58, 119 Stat. 594. Section 652 of the EPAct amended section 149 of the Atomic Energy Act (AEA) to require fingerprinting, for criminal history check purposes, of a broader class of persons. With regard to access to SGI before the EPAct, the NRC's fingerprinting authority was limited to requiring licensees and applicants for a license to operate a nuclear power reactor under 10 CFR part 50 to fingerprint individuals prior to granting access to SGI. The EPAct expanded the NRC's authority to require fingerprinting of only individuals with access to SGI. Under the EPAct, NRC has the authority to require that the following individuals conduct fingerprinting before granting access to SGI: (1) Individuals licensed or certified to engage in an activity subject to regulation by the Commission; (2) individuals who have filed an application for a license or certificate to engage in Commission-regulated activities; and (3) have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission. Previously, section 149 of the AEA only required fingerprinting and criminal history records checks of individuals seeking access to SGI (as defined in § 73.2) from a power reactor licensee or license applicant.

The EPAct preserved the Commission's authority in section 149 to relieve by rule certain persons from the fingerprinting, identification, and

criminal history records checks. The Commission recently exercised that authority to relieve by rule certain categories of persons from those requirements including Federal, State, and local officials involved in security planning and incident response, Agreement State employees who evaluate licensee compliance with security-related orders, members of Congress who request SGI as part of their oversight function, and certain foreign representatives. These exemptions are based on the Commission's findings that (1) interrupting those individuals' access to SGI to perform fingerprinting and criminal history checks would harm vital inspection, oversight, planning, and enforcement functions, (2) it would impair communications among the NRC, its licensees, and first responders in the event of an imminent security threat or other emergency, and (3) it could strain the Commission's cooperative relationships with its international counterparts, and might delay needed exchanges of information to the detriment of current security initiatives both at home and abroad. The final rule was published in the **Federal Register** on June 13, 2006 (71 FR 33,989). That final rule was necessary to avoid disruption of the Commission's information sharing activities during the interim period while the Commission completes the overall revision of the regulations in this rulemaking.

We have revised the original proposed rule to reflect the new requirements under the EPAct, and the final rule cited above, and we are again seeking public comment before promulgating a final SGI rule. We have also made revisions to reflect public comments on the original proposed rule, recent Commission direction, and Orders issued to licensees authorized to possess and transfer items containing certain quantities of radioactive material.

The Commission requests that comments on this revised proposed rule focus on the changes and additions to the original proposed rule and not on areas discussed in previous comments. Because the public has already had opportunity to comment on much of the material contained in this revised proposed rule, the Commission has determined that a 60-day comment period is appropriate, and requests for extension of the commenting period will not be granted.

SGI is a special category of sensitive unclassified information to be protected from unauthorized disclosure under Section 147 of the AEA. Although SGI is considered to be sensitive unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information (e.g., privacy and proprietary information). Part 73, ''Physical Protection of Plants and Materials,'' of the NRC's regulations in Title 10 of the Code of Federal Regulations (CFR) contains requirements for the protection of SGI. Commission orders issued since September 11, 2001, have also imposed requirements for the designation and protection of SGI. These requirements apply to SGI in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires SGI. An individual's access to SGI requires both a valid ''need to know'' the information and authorization based on an appropriate background investigation. Power reactors, certain research and test reactors, and independent spent fuel storage installations are examples of the categories of licensees currently subject to the provisions of 10 CFR part 73 for the protection of SGI. Examples of the types of information designated as SGI include the physical security plan for a licensee's facility, the design features of a licensee's physical protection system, and operational procedures for the licensee's security organization.

The Commission has authority under Section 147 of the AEA to designate, by regulation or order, other types of information as SGI. For example, Section 147a.(2) allows the Commission to designate as SGI a licensee's or applicant's detailed security measures (including security plans, procedures and equipment) for the physical protection of source material or byproduct material in quantities determined by the Commission to be significant to the public health and safety or the common defense and security. The AEA explicitly provides in Section 147a. that ''any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act.'' Furthermore, willful violation of any regulation or order governing SGI is a felony subject to criminal penalties in the form of fines or imprisonment, or both, as prescribed in Section 223 of the AEA.

The Commission has, by order, imposed SGI handling requirements on certain categories of these licensees. An example is the November 25, 2003 Order issued to certain materials licensees.[1] Violations of SGI handling and protection requirements, whether those specified in part 73 or those imposed by order, are subject to civil and criminal sanctions. Licensee employees, past or present, and all other persons who have had access to SGI have a continuing obligation to protect SGI in order to prevent inadvertent release and unauthorized disclosure. Information designated as SGI must be withheld from public disclosure and must be physically controlled and protected. Protection requirements include: (1) Secure storage; (2) document marking; (3) restriction of access; (4) limited reproduction; (5) protected transmission; (6) controls for information processing on electronic systems; and (7) destruction of SGI. The AEA explicitly provides in Section 147a. that ''any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act.'' Furthermore, willful violation of any regulation or order governing SGI is a felony subject to criminal penalties in the form of fines or imprisonment, or both, as prescribed in Section 223 of the AEA.

II. Need for Rule

Changes in the threat environment have revealed the need to protect as SGI additional types of security information held by a broader group of licensees. The current regulations do not specify all of the types of information that could be designated as SGI and are now recognized to be significant to the public health and safety or the common defense and security. The unauthorized release of this information could result in harm to the public health and safety and the Nation's common defense and security, as well as damage to the Nation's critical infrastructure, including nuclear power plants and other facilities and materials licensed and regulated by the NRC or Agreement States.

Since September 11, 2001, the NRC has issued orders that have increased the number of licensees whose security measures will be protected as SGI and added types of security information considered to be SGI. Orders have been issued to power reactor licensees, fuel cycle facility licensees, certain source material licensees, and certain byproduct material licensees. Some of

[1] This Order was published in the **Federal Register** as ''Licensees Authorized to Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Who Possess Certain Radioactive Material of Concern and all Persons Who Obtain Safeguards Information Described Herein; Order Issued on November 25, 2003, Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately),'' (69 FR 3397; Jan. 23, 2004).

the orders expanded the types of information to be protected by licensees who already have an SGI protection program, such as nuclear power reactor licensees. Other orders were issued to licensees that have not previously been subject to SGI protection requirements in the regulations, such as certain licensees authorized to manufacture or initially transfer items containing radioactive material.[2] Some orders imposed a new designation detailing modified handling requirements for certain SGI: Safeguards Information-Modified Handling (SGI–M). The more precise term is ''Safeguards Information-designated as Safeguards Information-Modified Handling'' to distinguish between ''type of information''—SGI, and the two sets of handling requirements ''SGI'' and ''SGI–M''. We are not seeking to create another type of information separate from SGI, and in fact SGI–M is SGI.

SGI–M refers to SGI with handling requirements that are modified somewhat due to the lower risk posed by unauthorized disclosure of the information. The SGI–M protection requirements apply to certain security-related information regarding quantities of source, byproduct, and special nuclear materials for which the harm caused by unauthorized disclosure of information would be less than that for SGI.

Some of the requirements imposed by orders that have increased the types of information to be considered SGI are not covered by the current regulations. Although the Commission has the authority to impose new SGI requirements through the issuance of orders, the regulations would not reflect current Commission SGI policy and/or requirements. Consequently, the NRC has opted to amend its regulations.

III. Purpose of Rulemaking

NRC staff review of the SGI regulatory program indicates that changes in the regulations are needed to address issues such as access to SGI, types of security information to be protected, and handling and storage requirements.

This rulemaking will:

(1) Revise the definition of ''need to know'' in 10 CFR 73.2;

(2) Implement expanded fingerprinting and criminal history check procedures for broader categories of individuals who will have access to SGI unless exempt from those requirements;

(3) Implement a requirement for background checks which form the basis for demonstrating trustworthiness and reliability for individuals who will have access to SGI unless exempt from those requirements. As discussed in detail later, background checks are comprised of several elements, which would now include a criminal history check;

(4) Modify part 73 to reflect the Commission's recent experience and actions, including addressing requirements contained in Orders issued following the terrorist attacks of September 11, 2001;

(5) Expand the scope of part 73 to include additional categories of licensees (e.g., source and byproduct material licensees, research and test reactors not previously covered, and fuel cycle facilities not previously covered);

(6) Expand the types of security information covered by the definition of SGI in § 73.2 and the information categories described in §§ 73.22 and 73.23 to include detailed security measures for the physical protection of byproduct, source, and special nuclear material; security-related scenarios and implementing procedures; uncorrected vulnerabilities or weaknesses in a security system; and certain training and qualification information; and

(7) Clarify requirements for obtaining access to SGI in the context of adjudications and clarify the appeal procedures available.

(8) Modify the original proposed rule to align it with the final rule in 10 CFR 73.59 granting relief from the identification and criminal history records check element (including fingerprinting) of background checks for designated categories of individuals.

(9) Modify 10 CFR 73.59 to make it consistent with the language and structure of the proposed SGI rule.

A graded approach based on the risks and consequences of information disclosure would be used in determining which category of licensee or type of information would be subject to certain protection requirements. This graded approach can be applied to issues such as the type of information to be protected, the classes of licensees subject to the rule, and the level of handling requirements necessary for the various licensees. For example, the graded approach would allow certain licensees to employ the modified-handling procedures introduced in recent orders and now set forth in the provisions of this revised proposed rule.

The requirements set forth in this revised proposed rule are the minimum restrictions the Commission finds necessary to protect SGI against inadvertent release or unauthorized disclosure which might compromise the health and safety of the public or the common defense and security. The revised proposed rule would cover those facilities and materials the Commission has already determined need to be protected against theft or sabotage. The categories of information constituting SGI relate to the types of facilities and the quantities of special nuclear material, source material and byproduct material determined by the Commission to be significant and therefore subject to protection against unauthorized disclosure pursuant to Section 147 of the AEA. Unauthorized release of SGI could reduce the deterrence value of systems and measures used to protect nuclear facilities and materials and allow for the possible compromise of those facilities and materials. Such disclosures could also facilitate advance planning by an adversary intent on committing acts of theft or sabotage against the facilities and materials within the scope of the revised proposed rule. Further, the Commission has determined, pursuant to Section 147a.(3)(B) of the AEA, that the unauthorized disclosure of the information that is the subject of this revised proposed rule could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of nuclear material or a production or utilization facility. The Commission has distinguished SGI designated as SGI–M, needing modified protection, from SGI for reactors and fuel cycle facilities that require a higher level of protection.

IV. Discussion

A. Overview of Public Comments on the Original Proposed Rule

On February 11, 2005, (70 FR 7196), the Commission published a proposed rule and requested public comments by March 28, 2005. Twenty-five comment letters were received, in addition to 622 letters from members of the public that were substantively identical. Copies of those letters are available for public inspection and copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, or on the NRC's Agencywide Document Access and Management System, available online at: *http://www.nrc.gov/reading-rm/adams/web-based.html.*

Two comment letters were from trade unions, four were from public interest or government watchdog groups, one was from a journalist group, three were from members of the public, one was from a State government agency, two were from the U.S. Department of

[2] See Order (69 FR 3397; January 23, 2004).

Energy, one was from a law firm that represents nuclear utilities, and eleven were from utilities or nuclear industry groups. The comment letters provided various points of view and suggestions for clarifications, additions, deletions, and changes. Responses to the comments, including those in the 622 letters from the public, are set forth below.

B. Comments and Issues

1. Comments In Response to Specific Request for Comments

In the February 2005 proposed rule, the NRC solicited specific public comment on the issue associated with differing requirements for access to SGI and SGI–M. The original proposed rule §§ 73.22(b)(1) and 73.23(b)(1) contained different requirements for performing background checks and making trustworthiness and reliability determinations for granting personnel access to SGI or SGI–M. These proposed requirements were based on the then-existing statutory authorization in Section 149 of the AEA for the NRC to require nuclear power reactor applicants or licensees to fingerprint individuals to be granted access to SGI. Before enactment of the EPAct on August 8, 2005, there was no similar statutory authorization to require fingerprinting by other applicants or licensees. Section 652 of the EPAct, however, amended Section 149 of the AEA to authorize the NRC to require fingerprinting of individuals granted access to SGI by all: (1) Individuals and entities engaged in activities subject to regulation by the Commission; (2) applicants for a license or certificate to engage in Commission-regulated activities; and (3) individuals and entities who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulations by the Commission.

The NRC published the original proposed rule six months before the Energy Policy was enacted, specifically inviting comment on whether stakeholders perceived difficulties in complying with the varying requirements of SGI and SGI–M. The Commission has considered stakeholders' suggestions, comments, and proposals regarding the issue of whether a more uniform approach can be provided for background checks and trustworthiness and reliability determinations. Although comments may not have explicitly referred to this request for specific comment, many comments addressed the issue of performing background checks and the criteria for determining trustworthiness and reliability for access to SGI and SGI–M. These comments and detailed responses are set forth below. Commission views are also presented.

One commenter expressed concern that the criteria to judge ''trustworthiness and reliability'' could be applied arbitrarily to restrict access to information by persons deemed to have interests opposing the NRC or nuclear industry. Commenters also questioned how a ''comprehensive background check'' would be conducted and what ''the other means'' for determining ''trustworthiness and reliability'' would be. Other commenters noted that the definition of ''trustworthiness and reliability'' does not clearly address how its requirements will be uniformly applied for all classes of individuals (for example, an individual who is not a utility employee such as an attorney for a utility or intervenor in an NRC adjudicatory proceeding), and whether there is a need for continued monitoring. Another commenter requested that the NRC address when background checks are required for persons requiring infrequent access to SGI or SGI–M such as commercial vendors periodically supplying security equipment and needed services to facilities. Some commenters requested greater detail on the criteria the NRC will use to determine access to SGI–M and that such criteria should allow for greater access to SGI–M because it poses ''a lower security risk.''

In response to these comments, the Commission notes that the purpose of the criteria to determine ''trustworthiness and reliability'' for access to SGI is to provide reasonable assurance to the person granting access and to the Commission that granting an individual access to SGI does not constitute an unreasonable risk to the public health and safety or the common defense and security. Applying the criteria to improperly restrict access to SGI on the basis of an individual's support or opposition to the nuclear industry is not consistent with the regulatory framework the Commission has established for granting access to SGI.

The changes to the original proposed rule text reflect Commission efforts to more thoroughly address the criteria for determining access to SGI. For example, the revised proposed rule defines the term ''background check'' and provides greater specificity in the definition of the term ''trustworthiness and reliability.'' The revised proposed rule provides procedural protections to individuals seeking access to SGI in the context of adjudication both before and after an adverse determination of trustworthiness and reliability by the NRC Office of Administration. Before an adverse determination of trustworthiness and reliability is made, individuals would be entitled to use the procedures set forth in § 73.57. In the context of NRC adjudications, individuals receiving an adverse determination on their background check for trustworthiness and reliability would be able to appeal that adverse determination to the presiding officer of the proceeding in which the SGI is sought. Potential witnesses, participants without attorneys, and attorneys would be able to request that the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the determination. Moreover, in the revised proposed rule, the Commission has standardized the criteria for access to SGI to implement amendments to Section 149 of the AEA contained in Section 652 of the EPAct. The revised proposed rule would require a Federal Bureau of Investigation criminal history check as part of the background check used to determine whether an individual is trustworthy and reliable before obtaining access to SGI, unless the Commission has otherwise provided. This requirement would extend to participants in NRC adjudicatory proceedings.

The frequency with which access to SGI is needed is not a factor for determining access to SGI or SGI–M based on the governing provisions of the AEA or the Commission's regulatory framework implementing those provisions. Establishing an individual's need-to-know the information and trustworthiness and reliability is necessary whether an individual needs a one-time access to SGI or SGI–M or access multiple times. A trustworthiness and reliability determination based on a background check must be made except for individuals enumerated in § 73.59 including contractors of an applicant or licensee. The Commission has determined that access to SGI and Safeguards Information designated as SGI–M by licensee employees, agents, vendors, or contractors must include both an appropriate need-to-know finding by the licensee and a finding concerning the trustworthiness and reliability of individuals having access to the information. Although a separate need-to-know determination will be required for each specific request for access to SGI, the requirement for a determination of trustworthiness and

reliability based on a background check could be considered satisfied within a certain period of time, 5 years for example. The same interval would apply to criminal history records checks (including fingerprinting), which are an element of a background check to determine trustworthiness and reliability.

A commenter also questioned why the Commission would institute requirements applicable to SGI–M and suggested that the ''less risk-associated information'' be ''Official Use Only'' while some of the more sensitive information be ''Classified National Security Information.'' The Commission has distinguished SGI designated as SGI–M, needing a lower level of protection. Information meeting the definition of SGI in Section 147 of the AEA is being protected as such rather than under the designations proposed by this commenter because such information should be protected as SGI does not constitute Classified National Security Information.

2. General Issues

Comment: Some commenters stated that the proposed regulations go beyond the ''minimum restrictions'' needed to protect the health and safety of the public or the common defense and security, as required by Section 147 of the AEA. Rather than applying this provision, the Commission has expanded the SGI category to include virtually anything it wants to withhold. Therefore, the original proposed rule should be withdrawn or drastically revised.

Response: The Commission recognizes there are limits to its discretion under Section 147 of the AEA in determining what information presents security concerns significant enough to warrant protection as SGI. The revised proposed rule does not expand the Commission's discretion beyond statutory limits—the revised proposed rule describes the information the Commission considers SGI and is within the scope of the authority granted by Section 147 of the AEA.

Section 147 of the AEA authorizes the Commission to protect information that specifically identifies the control and accounting procedures or security measures, including plans, procedures, and equipment used to protect source, byproduct, and special nuclear material. The categories of information to be protected under the rule fall well within this scope. Sections 73.22(a)(1) and 73.23(a)(1) would protect information associated with physical protection such as alarm system layouts, intrusion detection equipment, and security communications systems, among other information. Sections 73.22(a)(2) and 73.23(a)(2) would protect information associated with physical protection such as intrusion alarms, vehicle immobilization features, and plans for law enforcement coordination. Sections 73.22(a)(3) and 73.23(a)(3) would protect inspection reports, audits, and evaluations to the extent they discuss security measures or security vulnerabilities. All of this and other information categorized in the regulations, if publicly disclosed, could be used to specifically identify the control and accounting procedures or security measures, including security plans, procedures, and equipment used to protect source, byproduct, and special nuclear material and allow the circumvention of those plans, procedures, or equipment.

The Commission's proposed conditions for access to SGI are not overly restrictive. Persons authorized access must be trustworthy and reliable based upon a background check to ensure that they will not purposely or inadvertently compromise the information. Access to SGI is limited to those with a ''need to know'' the information to avoid unnecessarily broad distribution of the information, which would increase the risk of inadvertent disclosures. As in the current SGI regulations, certain persons would be deemed trustworthy and reliable by virtue of their occupational status-these persons are generally members of government or law enforcement agencies, who in many cases have undergone background checks as a condition of their employment. Representatives of foreign governments or organizations would also not be subject to the background and criminal history checks, if approved by the Commission for access to SGI. Such an exemption is consistent with the Commission's historical practice. All of these persons would still be required to demonstrate a ''need to know'' the information.

The Commission's proposed SGI handling requirements are not overly restrictive. Document marking requirements are necessary to distinguish SGI from other information so that it can be properly controlled. Locking up SGI while unattended is necessary to prevent unauthorized access to the information, as is limiting access to keys and knowledge of lock combinations. Restrictions on electronic processing, telecommunications and transmission are important to prevent interception of SGI, whether by electronic surveillance or other means.

Comment: Many commenters suggested that the SGI designation does not permit the NRC to withhold all information and that the NRC is acting illegally and trying to silence those who are trying to improve nuclear safety. If instituted, these regulations would compromise the public's ability to hold the nuclear industry and its government regulators accountable for their management of nuclear facilities and materials.

Response: The Commission recognizes that there are statutory limits to the use of the SGI designation. The revised proposed rule remains within these limits and describes categories of information that may properly be considered SGI. The revised proposed rule recognizes the Commission's authority to issue further orders or regulations designating information as SGI, provided it is within the scope of Section 147 of the AEA.

The Commission's purpose in proposing this rulemaking is not to unnecessarily withhold information from the public, to silence criticism of nuclear safety or security policies or to prevent the public from offering suggestions for improvement. The proposed SGI regulations are intended to ensure adequate protection of the public health and safety and the common defense and security by preventing authorized disclosure of certain, limited category of information that could be used to compromise the security of nuclear facilities and materials.

The Commission always welcomes public input on nuclear safety and nuclear security. Members of the public may write letters to the Commission, file petitions for rulemaking under 10 CFR 2.802, and file requests to institute a proceeding to modify, suspend, or revoke a license under 10 CFR 2.206. Members of the public may seek to initiate or participate in adjudications held in connection with proposed licensing actions. They may also attend public meetings to communicate their safety and security concerns. The NRC will always consider and respond to public concerns, but it must do so without compromising the safety and security of nuclear materials and facilities.

Comment: One commenter stated that the original proposed rule would create a system without rights, duties, and obligations such as those in the Freedom of Information Act (FOIA), which would abuse the open government principles on which the United States was founded. Other commenters proposed that a final rule include procedures for designating

officials who may withhold SGI, to provide oversight of the system, and to allow for review or appeal of SGI or SGI–M determinations. A commenter stated that the NRC has not provided an individual the opportunity to challenge an SGI determination by appealing to the head of the agency. A commenter expressed concerns that a final rule needed the types of controls and checks that are built into the national security classification system. According to the commenter, there are no mechanisms for reviewing and appealing decisions to categorize information as SGI; the rule has an inadequate mechanism for removing information from SGI status once it has been categorized; there are no truly independent bodies to exercise oversight over SGI determinations; there is no recognized channel for getting disputes over SGI status into court; and there are insufficient mechanisms for making the portions of SGI information which would not present a risk in the form of redacted documents available to Congress, the news media, and the public.

Response: Section 147 of the AEA sets forth the substantive legal requirements governing the protection of SGI. Section 147 of the AEA does not require the Commission to develop FOIA-like appeal procedures to resolve individual challenges to SGI designation on a case-by-case basis.

Creation of FOIA-like appeal procedures would result in a cumbersome administrative process for SGI designation and potentially require substantial resources to implement and administer. The preferred approach is the one the Commission is proposing here—providing the public notice of and opportunity to comment on categories of information the Commission would consider SGI.

Throughout this rulemaking, the Commission has been open about the categories of information it seeks to protect and the reasons for protecting that information. The Commission is giving the public adequate notice of the approach and ample opportunity to challenge the Commission's SGI designations on a generic basis. There is no need to develop procedures for challenging the designation of information as SGI or SGI–M.

Comment: One commenter proposed that the NRC should followup this rulemaking with the deletion of or revisions to current orders and advisory letters. In the interim, NRC should, by order or regulation, state that the revised regulations supersede all conflicting orders and advisory letters issued prior to the effective date of the revision to the regulations.

Response: This revised proposed rule incorporates the requirements for SGI protection previously described in NRC orders and advisory letters. The final rule would, on its effective date, supersede all SGI orders and advisory letters issued prior to that effective date. The Commission will, however, take administrative action to withdraw all previously orders where appropriate.

Comment: One commenter recommended that the NRC rule specify that security information or plans associated with a licensee possessing, using, transporting, or offering for transport greater than or equal to Category (CAT) I quantities of Strategic Special Nuclear Material (SSNM) be controlled as Classified National Security Information in accordance with the provisions of 10 CFR parts 25 and 95. In addition, the commenter recommends that the NRC revise the final rule with respect to the protection of information associated with security information and plans for a licensee possessing, using, transporting, or offering for transport CAT II and III quantities of special nuclear material (SNM) to utilize a risk-informed and graded approach consistent with the change to CAT I SSNM, specifically:

(1) Security information and plans for licensees possessing, using, transporting, or offering for transport less than a formula quantity of SSNM but greater than or equal to a CAT II quantity of SNM (consisting of U-233, Pu, or high-enriched U-235 (enriched to 20 percent or more)) should be controlled as SGI per the requirements of §§ 73.21 and 73.22 of the original proposed rule;

(2) Security information and plans for licensees possessing, using, transporting, or offering for transport less than a CAT II quantity of SNM (consisting of U-233, Pu, or high-enriched U-235 (enriched to 20 percent or more)), but more than 10 kg of a CAT III quantity of SNM, or a CAT II quantity of low-enriched U-235 (enriched to less than 20%) should be controlled as SGI–M per the requirements of §§ 73.21 and 73.23 of the original proposed rule;

(3) The risks associated with security information and plans for licensees possessing, using, transporting, or offering for transport less than a CAT III of SNM do not require protection under part 73.

The commenter suggests that this approach would provide greater regulatory clarity than the NRC's original proposed rule language of ''fuel cycle facilities required to implement security measures'' and ''fuel cycle facilities'' in §§ 73.21(a)(1)(i) and 73.22 introductory text, respectively, by clearly identifying *de minimis* levels of SNM requiring protection.

The commenter also recommends that the NRC revise part 76 to incorporate this graded approach for certificate holders under part 76, because the requirements for protection of CAT I, II, or III SNM under parts 70 and 76 should be the same.

Response: The revised proposed rule language clearly indicates that it only applies to information that is not classified as Restricted Data or National Security Information. If the specific information is considered to be Restricted Data or National Security Information it would be protected as such and the SGI provisions would not apply.

The NRC staff agrees that a graded approach should be used, and the revised proposed rule uses a graded approach. The staff agrees that additional clarification is necessary to explain what is meant by fuel cycle facilities. The original proposed rule text has been revised to add clarity. Fuel fabrication facilities, uranium enrichment facilities, uranium hexafluoride conversion facilities, and independent spent fuel storage installations will be subject to the provisions in § 73.22 for SGI. Research and test reactors and other facilities that have special nuclear material of low or moderate strategic significance will be subject to the provisions of § 73.23 for SGI–M.

Comment: One commenter suggested that a final rule either: (1) Remove the designation of site access information as SGI; or (2) specify that the ''need to know'' includes the protection of employment and labor rights, so that individuals involved in employment-related grievances, arbitration, litigation, and/or labor contract negotiations and administration may gain access to relevant SGI when such individuals qualify as ''Individuals Authorized to Access Safeguards Information''. Also, the commenter requests that the rule set forth a procedure by which employees and their representatives may apply to gain access to relevant SGI for the protection of employment and labor rights so that individuals involved in employment-related grievances, arbitration, litigation and/or labor contract negotiations and administration may gain access to relevant SGI when such individuals do not qualify as ''Individuals Authorized to Access Safeguards information.''

The commenter asserts that it is additionally problematic that site access information is SGI because it could lead to an unnecessary chilling effect having adverse safety implications. Removing

site access information as SGI or, alternatively, establishing provisions whereby employees and their representatives may obtain such information, will prevent violations of individuals' rights under applicable laws and will not compromise the safety of nuclear facilities.

Response: The revised proposed rule would not designate ''site access information'' as SGI and is not intended to discourage individuals from raising safety or security concerns to licensees or the NRC. Employees of NRC licensees who feel they have been retaliated against for raising safety or security concerns are encouraged to seek potential enforcement action through the NRC and to go to the Department of Labor for potential personal remedies.

There is no presumptive ''need to know'' for agents representing employees of NRC licensees in employment-related grievances. The revised proposed rule would not establish a special procedure by which agents representing employees of NRC licensees may have access to SGI, but the Commission retains the authority to grant such access if the circumstances of an individual case so require.

Comment: One commenter contended that the Commission lacks the statutory authority to impose regulations for the protection of SGI pertaining to the security measures of State licensees. According to this commenter, the licensees or applicants referred to in Section 147 of the AEA are clearly those of the Commission only, and not of the Agreement States.

Response: Section 147a. of the AEA requires the Commission, in relevant part, to prescribe such regulations or issue such orders as necessary to prohibit the unauthorized disclosure of SGI. The Commission also has authority under Subsections 161b. and 161i. to issue rules, regulations, or orders to protect the common defense and security. Moreover, Section 274m. of the AEA, ''Cooperation with States,'' provides that no agreement entered into pursuant to Section 274b. shall affect the Commission's authority under Subsections 161b. and, 161i.

As to the commenter's assertions regarding the terms ''licensee'' or ''applicant,'' the plain language of Section 147 refers simply to ''licensee's or applicant's [detailed information].'' Section 147 draws no distinction between a ''Commission licensee'' as the commenter asserts and an ''Agreement State licensee.'' Thus, on its face, the statute does not support the commenter's viewpoint.

Comment: One commenter suggested that a final rule should focus not only on SGI and SGI–M material, but should include rules for the protection of other levels of information.

Response: The scope of this rulemaking, as stated in the original proposed rule, is limited to amending the regulations for the protection of SGI. Other types of information are governed by separate requirements. For example, an executive order, applicable government-wide, controls Classified National Security Information. E.O. 12958, as amended, ''Classified National Security Information'', and related directives of the Information Security Oversight Office, National Archives and Records Administration, April 20, 1995. NRC regulations found in 10 CFR 2.390 govern handling of other categories of sensitive unclassified information. The NRC has determined that no further changes to NRC regulations are warranted at this time.

Comment: One commenter questioned the ''correct'' categorization of information the NRC considers to be SGI. According to the commenter, when a Department of Energy (DOE) facility is licensed, there may be difficulties in deciding if the information should be Classified National Security Information (CNSI) or SGI. On the other hand, the commenter asserted that ''Official Use Only'' should be considered before marking the information as SGI.

Response: The proposed amendments to the regulations reflect the statutory definitions of SGI in Section 147 of the AEA. The Commission believes that the definitions in the revised proposed rule accurately reflect the information described in Section 147 as SGI. Both the relevant proposed amendments to part 73 as well as guidance that would be issued by the staff would assist licensees in correctly designating information to be protected as SGI. The DOE has previously demonstrated that it has a comprehensive program governing the classification of information. As noted in the original proposed rule, any information classified as National Security Information would carry that designation and not be designated as SGI.

It is appropriate for any entity possessing sensitive information, classified or otherwise, to consider all possible and appropriate classifications/designations of information when making decisions to protect such information from public disclosure. The Commission expects that information falling within the definition of SGI will be so designated, thus mandating the withholding of the information from public disclosure and that only information properly characterized as SGI will be designated as such. In this regard, the Commission notes that information marked as ''Official Use Only'' does not assure that the information will be withheld from public disclosure.

Comment: One commenter recognized that requirements in 10 CFR 73.22, for SGI, would apply to reactors and licensees authorized to possess a formula quantity of SSNM, while requirements in 10 CFR 73.23, for SGI–M, would apply to licensees authorized to possess certain quantities of source and byproduct material and SNM of moderate or low strategic significance. The commenter pointed out that some licensees are authorized to possess, in one license, in excess of a formula quantity of SSNM, in addition to a significant quantity of source material and byproduct material. The commenter suggested that the rule is not clear on whether such a licensee should follow § 73.22 or § 73.23. The commenter further suggested that it would seem burdensome for a single licensee to have separate SGI and SGI–M programs. Another commenter noted that industry discussions with the NRC led it to believe that controlling SGI–M documents under its existing SGI program was acceptable; however, the proposed changes in paragraph (d) of §§ 73.22 and 73.23 appear to contradict that position and expand the marking and handling requirements to apply to both SGI and SGI–M documents. That commenter noted that, given the effectiveness of the current program, there does not appear to be any justification for the additional marking requirements in paragraph (d).

Response: The NRC agrees with the comment that it could be inefficient for licensees possessing categories or quantities of material under §§ 73.22 and 73.23 to implement both information protection schemes. Licensees subject to both §§ 73.22 and 73.23 would be in compliance with the requirements for protection of SGI if they implement the higher protection standards in § 73.22, or they may choose to implement a multi-level approach. Licensees with a single-level information security system could use the marking ''Safeguards Information'' in place of ''Safeguards Information—Modified Handling.'' This alternative would be appropriate because the facility security measures and associated information protection requirements would be based on the higher category of asset possessed by the licensee.

A primary difference between the SGI protection requirements in § 73.22 and the SGI–M protection requirements in § 73.23 is how the information is

marked and stored. SGI in the former category is marked ''Safeguards Information'' while the latter category is marked ''Safeguards Information designated as Safeguards Information-Modified Handling.'' The different markings are associated with different storage requirements. SGI described in § 73.22 must be stored in a locked security storage container, but SGI described in § 73.23 has a less stringent storage requirement—the information must be stored in a locked file drawer or cabinet or may be stored in a security container as described in § 73.22.

Proper marking is necessary when SGI is communicated between entities or parties so that the recipient does not receive a document with markings that would require storage in a container that the recipient does not possess. It is the duty of the licensee or applicant who transfers documents containing SGI to a party beyond their control to ensure that the document is properly marked. Without the appropriate document markings, the sender inadvertently could cause a violation of the regulations.

Comment: One commenter noted that the expanded types of documents that must be handled as SGI or SGI–M and the addition of marking requirements will require additional effort and time to implement. Therefore, the commenter suggested that the rule allow at least one year for the licensee to effectively implement the requirements.

Response: The NRC recognizes that SGI requirements require effort and time to implement, but does not concur that one year is necessary for implementation. This revised proposed rule reflects orders already imposed by the Commission and would expand the types of security information covered by § 73.2. Considering the scope of the rule, the Commission proposes to set an effective date for the final rule of 90 days from publication in the **Federal Register**.

Comment: One commenter stated that the reference in the Supplementary Information portion of the original proposed rule to criminal penalties for violation of Commission requirements governing SGI should clarify that criminal sanctions are only imposed for willful violations.

Response: In response to this comment, the relevant language in Section I. (''Background'') of this revised proposed rule has been changed to remove ambiguity about the application of criminal penalties for violations of the AEA (*i.e.*, such penalties apply to willful violations only).

Comment: One commenter asked whether DOE facilities licensed by the NRC would be excluded from all orders.

Response: To the extent that the NRC has regulatory authority over a DOE facility, the NRC has the authority to issue orders to the DOE applicable to that facility.

3. Section-Specific Comments

Parts 60 and 63: Disposal of High-Level Radioactive Waste in Geologic Repositories; Disposal of High-Level Radioactive Wastes in a Geologic Repository in Yucca Mountain, Nevada

Comment: One commenter suggested that the degree of information security required for facilities licensed under parts 60 and 63 is insufficient for the protection of National Security Information and is inconsistent with long-standing NRC classification guidance, recent Commission and staff actions, as well as the 2004 ''Joint DOE and NRC Sensitive Unclassified Information and Classification Guide for the Office of Civilian Radioactive Waste Management Program'' (CG–OCRWM–1, which is non-public). The commenter contends that this inconsistency in language will cause regulatory confusion and could lead to inadequate protection of National Security Information or inadequate enforcement authority.

Specifically, the commenter notes that the proposed language in §§ 70.22, 70.32, 73.2, and 73.22 refers to physical security, safeguards contingency, and guard qualification and training plans information being controlled as SGI per §§ 73.21 and 73.22. However, CG–OCRWM–1, the commenter notes, indicates that certain information associated with the proposed Yucca Mountain repository will be considered National Security Information.

In addition, the commenter contends that §§ 60.21, 60.42, 63.21, and 63.42 refer to the ''design for physical security'' to be protected as SGI, but does not mention the ''physical security plan.'' The commenter suggests that the NRC explicitly require the physical security plan for a repository licensed under parts 60 or 63 be protected as SGI or classified information, to ensure that the plan itself is properly protected and that greater regulatory consistency is maintained. In addition, the commenter recommends that the NRC revise parts 60 and 63 to require design for physical security and the physical security, safeguards contingency, and guard qualification and training plans be controlled as SGI or classified information per parts 25 and 95.

Response: The SGI definition includes the disclaimer that it does not include information classified as National Security Information or Restricted Data. Any information covered by the classification guide as constituting National Security Information would continue to be classified. The proposed regulation would cover security related information that is not covered by the classification guide. Changes to this revised proposed rule are not necessary to specify which information is considered to be National Security Information and which is SGI, however, changes to the original proposed rule have been made in §§ 60.21, 60.42, 63.21, and 63.42 to clarify that security information associated with a geologic repository would be protected as SGI or as classified information. The NRC has also revised the original proposed rule language to remove the inconsistency in terminology for the ''physical security,'' ''safeguards contingency,'' and ''guard qualification and training plans.''

Comment: One commenter suggested that the program entitled ''Joint DOE and NRC Sensitive Unclassified Information and Classification Guide for the Office of Civilian Radioactive Waste Management Program'' remains an adequate and acceptable program, as written, for the identification of SGI and its continued use in the part 63 licensing process will be in compliance with this rulemaking.

Response: A classification/designation guide, ''Joint DOE and NRC Sensitive Unclassified Information and Classification Guide for the Office of Civilian Radioactive Waste Management Program,'' has been issued by the NRC and the DOE. This guide reflects the current laws and regulations governing classification and designation of information required to be protected from unauthorized disclosure. The NRC staff believes that this guide represents the information proposed to be protected by the current rulemaking.

Part 73: Physical Protection of Plants and Materials

Section 73.2 Definitions

The Commission received numerous comments on the definitions. Commenters asked the Commission to revise, delete, or add definitions for terms used in the rule. Some new terms have been added because of changes made in other sections of the revised proposed rule. Public comments and responses to the comments, as well other reasons for changes to § 73.2, are presented below.

Comprehensive Background Check

Comment: Commenters suggested that the term ''comprehensive background check'' be defined.

Response: The Commission has changed the phrase ''comprehensive background check'' to ''background check'' in the new proposed rule. The change is intended to more clearly distinguish the background check requirements of this revised proposed rule from the background investigation requirements of other regulations governing access authorization (10 CFR 73.56). Background investigations required under those regulations are arguably more comprehensive. To avoid the impression that the background check that would be required by this rule would be more stringent or probing than background investigations, the word ''comprehensive'' has been deleted.

The Commission has included a general definition of ''background check'' in § 73.2 of the revised proposed rule. A background check performed to determine the trustworthiness and reliability of an individual to be authorized access to SGI or SGI–M includes, at a minimum, a criminal history check, verification of identity, employment history, education, and personal references. The EPAct expanded the NRC's authority to fingerprint, and as such, entities engaged in activities subject to regulation by the Commission, entities who applied for licenses or certificates to engage in Commission-regulated activities, and entities who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission would be required under 10 CFR 73.57 to conduct criminal history checks, including fingerprints, before granting access to SGI or SGI–M to the employees of the individual's organization.

Ultimately, the decision whether an individual is sufficiently trustworthy and reliable to receive SGI or SGI–M is made by the person granting access. In the case of information held by the NRC staff and the originator, the NRC staff would make the determination. The background check must be sufficient to support a trustworthiness and reliability determination so that the person granting access and the Commission have reasonable assurance that individuals granted access to SGI do not constitute an unreasonable risk to the public health and safety or the common defense and security.

To reiterate, the background check that would be required by this revised proposed rule may not completely satisfy the background investigations required under other regulations. Nor does the trustworthiness and reliability determination based on the background check that would be required by this revised proposed rule satisfy the trustworthiness and reliability objectives of other regulations. For example, determining trustworthiness and reliability under 10 CFR 73.56 requires not only a background investigation, but a psychological assessment and behavioral observation as well. Determining trustworthiness and reliability under 10 CFR 26.10 requires chemical and alcohol testing under a fitness-for-duty program. Those requirements are separate from the requirements of this revised proposed rule.

The NRC staff plans to issue further guidance that will include a discussion of acceptable background checks to support a licensee's trustworthiness and reliability determinations.

Detailed Control and Accounting Procedures

Comment: One commenter suggested that the term ''detailed control and accounting procedures'' for SNM needs clarification, for example, as to whether it includes: (1) The written directions for transferring fuel between the fuel pool and the reactor; (2) the outage schedule that shows when fuel movement occurs; (3) the real-time communication channels or video-monitoring to support fuel movement; or (4) the computer and software that performs the isotopic calculations for irradiated fuel. The commenter is concerned that restricting access to these types of detailed information would significantly hamper work coordination and communication within the protected area, without affecting what is commonly known outside the protected area in a more general sense.

Response: In response to the request in this comment, the Commission notes that ''detailed control and accounting procedures'' do not include any of the four types of information set forth in this comment. Therefore, there should be no concern about restricting access to these types of information on the basis that they are SGI.

High-Level Radioactive Waste, Spent Nuclear Fuel, and Irradiated Reactor Fuel

Comment: A commenter requested that these terms be defined in § 73.2.

Response: The revised proposed rule would make conforming changes to 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.'' The terms ''high-level radioactive waste'' and ''spent nuclear fuel'' are defined in existing 10 CFR 72.3. These definitions of ''high-level radioactive waste'' and ''spent nuclear fuel'' would not be affected and would continue to apply. The description of ''irradiated reactor fuel'' provided in § 73.37 includes certain spent fuel described in parts 71 and 72, is consistent with the definition of spent fuel in the Nuclear Waste Policy Act (NWPA), and appropriately uses a graded approach for physical protection and safeguards considerations. Therefore, the Commission does not believe a separate definition of the term is needed in § 73.2.

Safeguards Information (''SGI'')

Comment: Commenters stated that the definition of this term in the original proposed rule is too broad. They asked that the terms used in Section 147 of the AEA, ''a licensee's or applicant's'' detailed information, be included in the rule's definition of SGI.

Response: This revised proposed rule modifies the definition of SGI to more closely track the language in Section 147, by including the term ''licensee's or applicant's [detailed information].'' However, SGI could include information other entities generate, e.g. vendors, as such information could ultimately identify a licensee's or applicant's detailed procedures, security measures, or other information within the scope of Section 147.

Comment: A commenter suggested that while security measures to protect certain plant equipment vital to the safety of production or utilization facilities should be protected as SGI, the location of the equipment should not be included within the definition of SGI.

Response: As set forth in Section 147 of the AEA, SGI includes ''security measures for the physical protection of and the ''location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear material covered by paragraphs (1) and (2) [of Section 147a]''. The Commission has determined, in accordance with Section 147a.(3) of the AEA, that the unauthorized disclosure of this type of information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security. As required by Section

147a.(3)(A), the Commission applied the minimum restrictions necessary to protect the health and safety of the public or the common defense and security in making this determination. As noted in the Statement of Considerations for the original proposed rule, one purpose of this rulemaking is to include in part 73 the types of information the Commission may protect as SGI, based on the description of SGI in Section 147 of the AEA. Accordingly, the Commission is keeping the language which is the subject of this comment in the definition of SGI in § 73.2.

Comment: A commenter requested that the definition of SGI in § 73.2 include language that allows for temporary status of SGI, based, for example, on a six-month period in which there would be an immediate risk if the information were disclosed.

Response: Designation of information as SGI is not static. Section 73.22(h), ''Removal from Safeguards Information category'' would require that documents originally containing SGI must be removed from the SGI category, in accordance with the criteria in § 73.22(h), at such time as the information no longer meets the criteria contained in part 73. In addition, a review of such documents to make that determination shall be conducted every 10 years. Documents that are 10 years or older and designated as SGI or SGI–M shall be reviewed for a decontrol determination if they are currently in use or removed from storage. The Commission sees no need to modify the definition of SGI to reflect the non-permanent nature of the SGI designation, as the commenter requests.

Comment: According to another comment, the definition of SGI should not allow a source or byproduct material ''exemption'' that would allow the NRC to categorize anything as SGI if it believed disclosure of that information could have an adverse effect on the public health and safety or the common defense and security. The commenter expressed concern that such language could be overused or abused, and therefore suggested that it be eliminated and that the definition of SGI be more precise and have clearly defined limits.

Response: Section 147a.(2) of the AEA specifically includes as SGI security measures for the physical protection of source material or byproduct material in quantities determined by the Commission to be significant to the public health and safety or the common defense and security. The Commission has appropriately defined the categories of information to be protected as SGI or SGI–M in this rulemaking. Those categories are within the limits of the Commission's authority under Section 147 of the AEA.

Comment: A commenter objected to the ''blanket exemption'' in the definition of SGI and requested that this ''exemption'' be eliminated. According to the commenter, such an ''exemption'' was unnecessary and could adversely impact workers'' and communities' abilities to monitor health risks.

Response: The definition of SGI does not contain any explicit ''exemption.'' Therefore, the Commission can only surmise as to the ''exemption'' to which this comment refers. The commenter may be referring to that portion of the definition which reflects the Commission's authority, under Section 147a.(3) of the AEA, to determine certain security measures to be SGI, provided certain findings are made pursuant to Sections 147a.(3)(A) and (B). In exercising this authority, the Commission would, as reflected in the SGI definition, make the designation by order or regulation as specified in revised 73.22(a)(5) and 73.23(a)(5). The Commission is proposing to modify this portion of the definition of SGI to make clear that the ''other information'' would be within the scope of Section 147.

Safeguards Information-Modified Handling (''SGI–M'')

Comment: A commenter believes that the definition of this term is unclear and should be defined as ''lower-risk information'' and therefore have less rigorous restrictions and greater public access.

Response: The definition of SGI–M in § 73.2 is not as specific as the definition of SGI in § 73.2. The main reason for this is that SGI–M is SGI for which modified handling requirements apply. As stated in the Statement of Considerations for the original proposed rule, the term SGI–M ''would be added to reflect this new designation for marking [and handling] of SGI subject to this regulation.'' 70 FR at 7199. The marking and handling requirements for SGI–M are set forth in § 73.23, ''Protection of Safeguards Information-Modified Handling: Specific Requirements.'' Those requirements are less restrictive than for information marked SGI, for example, requirements for unattended storage of SGI–M set forth in § 73.23(c)(2). The introductory text of § 73.23 and paragraph (a) of that section specifically describe the types of information SGI–M that are subject to the handling requirements. Therefore, the Commission sees no need to modify the definition of SGI–M in the revised proposed rule.

Significant Adverse Effect

Comment: One commenter proposed that a final rule define the term ''significant adverse effect''.

Response: The term ''significant adverse effect'' appears in Section 147.a. of the AEA, in the proposed definition of SGI, and elsewhere in the revised proposed rule. The term reflects the Commission's authority under Section 147a.(2) and (3) to protect against a certain type of unauthorized disclosure of information. Such an unauthorized disclosure is one which ''could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage'' of material or a facility. Thus, a ''significant adverse effect'' is one which could significantly increase the likelihood of such effects. The Commission believes that this statement adequately describes the term and a separate definition is not necessary.

Transportation Physical Security Plan

Comment: One commenter proposed that the final rule define the term ''transportation physical security plan''.

Response: The phrase ''transportation physical security plan'' does not appear in the revised proposed rule. The new proposed rule would require protection of ''the composite physical security plan for transportation'' in § 73.22(a)(2)(i), and ''information regarding transportation security measures, including physical security plans and procedures'' in § 73.23(a)(2)(i). The revision was made in part because not all licensees who would be subject to the revised proposed rule are explicitly required to have a ''transportation security plan.''

The revised proposed rule is intended to protect information detailing the physical security measures and procedures used to protect source, byproduct, and special nuclear material in transit, whether or not those measures and procedures are contained in a document labeled ''transportation security plan.'' Because the term ''transportation physical security plan'' is not used in the revised proposed rule, there is no need to provide a definition.

Threat Environment

Comment: One commenter proposed that a final rule define the term ''threat environment.''

Response: The phrase, ''threat environment,'' does not appear in the revised proposed rule text and, therefore, a definition for that term is not warranted.

Trustworthiness and Reliability

Comment: Several commenters from both public interest and industry groups expressed concern with the proposed definition of ''Trustworthiness and Reliability'' and whether it is sufficiently clear. One commenter wrote that it is conceivable that the criteria used to judge ''trustworthiness and reliability'' could be applied arbitrarily to restrict access to information by persons deemed to have interests in opposition to the NRC or the nuclear industry. This commenter also expressed concern that the procedure by which the ''comprehensive background check'' would be conducted is not clear.

Another commenter expressed the opinion that the ''definition of trustworthiness and reliability does not clearly address how its requirements will be uniformly applied for all classes of individuals, nor is it clear as to whether there is a necessity for continued monitoring, nor is it clear what process an individual who is not a utility employee and does not have unescorted access must undergo to satisfy the criteria.''

A third commenter suggested that the definition of trustworthiness and reliability should include a link to §§ 73.56 and 26.10 such that a positive conclusion for access authorization and fitness for duty would allow a licensee to conclude an individual is trustworthy and reliable; however, unescorted access should not be a requirement for ''trustworthiness and reliability.''

Finally, along similar lines, one commenter questioned whether elements in §§ 73.56 and 26.10 must be completed in order to determine trustworthiness and reliability. If that is the case, the commenter suggested that it should be specified. The commenter also expressed concerns that such a definition would be challenging to administer, especially for contract engineering firms who are never at the site.

Response: Ultimately, the decision whether an individual is sufficiently trustworthy and reliable to receive SGI is made by the person granting access based on a background check. The background check must be sufficient to support the trustworthiness and reliability determination so that the person granting access and the Commission have reasonable assurance that granting an individual access to SGI does not constitute an unreasonable risk to the public health and safety or the common defense and security. The general elements of a background check are defined in the revised proposed rule and discussed briefly above.

Not all persons who would be subject to this rule will have fitness for duty or access authorization programs, so the revised proposed rule does not include cross-references to trustworthiness and reliability requirements in §§ 26.10 or 73.56. Trustworthiness and reliability determinations required by those regulations may inform or serve as the trustworthiness and reliability determination that would be required under this revised proposed rule, if those determinations are based on a background check that also meet the requirements of this rule. The NRC staff plans to issue further guidance that will include discussion of acceptable background checks to support a licensee's trustworthiness and reliability determinations.

There is no requirement in this revised proposed rule that an individual determined to be trustworthy and reliable undergo a periodic background check to confirm or monitor trustworthiness and reliability. However, should a licensee learn of information that would reasonably call into question the trustworthiness and reliability of an individual authorized access to SGI or SGI–M, the licensee should re-evaluate the individual. In the case of NRC adjudicatory proceedings where subsequent requests for access are made, a new determination may be required depending on the length of time that has elapsed between requests.

The trustworthiness and reliability determination based on a background check that would be required does not necessarily satisfy the trustworthiness and reliability objectives of other regulations. For example, determining trustworthiness and reliability under 10 CFR 73.56 requires not only a background investigation, but a psychological assessment and behavioral observation as well. Determining trustworthiness and reliability under 10 CFR 26.10 requires chemical and alcohol testing under a fitness-for-duty program. Those requirements are separate from the requirements of this rule.

The Commission realizes that the trustworthiness and reliability requirement could be difficult to administer. But the same is true of many requirements aimed at monitoring the behavior and character of individuals. That does not make the requirement any less essential to ensuring safety and security. Determining trustworthiness and reliability is crucial to minimizing the risk that SGI will be compromised, and the Commission expects persons making trustworthiness and reliability determinations to do so in a fair and reasoned way.

Section 73.21 Protection of Safeguards Information: Performance Requirements

Comment: One commenter suggested that § 73.21 be revised to require SGI protection for information associated with the transportation of spent nuclear fuel (SNF) or high level waste (HLW) in greater quantities than 15 grams in order to be consistent with the NRC's fissile exemption limit for transportation purposes found in § 71.15(b). As a conforming change, the commenter also proposed that § 73.2 be revised to include definitions for ''spent nuclear fuel,'' ''high-level radioactive waste,'' and ''irradiated nuclear fuel,'' and that § 73.72 should be revised in the final rule to refer to advance notifications of shipments of greater than 15 grams of SNF or HLW.

Response: The Commission believes that the physical protection measures for shipments involving 100 grams or more of irradiated reactor fuel are appropriately controlled as SGI per § 73.22. Detailed security measures, physical security plans and procedures for the transportation of source, byproduct, and SNM in greater than or equal to Category 1 quantities of concern are designated as SGI–M pursuant to § 73.23(a)(2)(i). Those quantities cover the lower threshold for material as proposed by the commenter. NRC orders issued to persons transporting such materials require protection of such information and material when in transit.

In response to the comment requesting definitions of the terms ''spent nuclear fuel,'' ''high-level radioactive waste,'' and ''irradiated nuclear fuel,'' the Commission noted that the first two terms are defined in 10 CFR 72.3 and the third term is described in § 73.37. Therefore, separate definitions of these terms in part 73 are unnecessary.

Section 73.21(a)(1)

Comment: Two commenters suggested that the use of the terms ''fuel cycle facilities required to implement security measures'' in § 73.21(a)(1)(i) and ''fuel cycle facilities'' in the introductory language of § 73.22 are unclear. The commenters requested clarification on whether this is meant to apply to all fuel cycle facilities, or only those authorized to possess a formula quantity of special nuclear material, and not low strategic significance fuel cycle facilities, where SGI–M requirements might apply.

Response: The Commission has changed the text of the new proposed rule by deleting the phrase ''fuel cycle facilities'' and replacing it with ''uranium hexafluoride production

facilities, fuel fabrication facilities, and uranium enrichment facilities.'' Fuel cycle licensees authorized to possess a formula quantity of SSNM remain subject to the requirements of § 73.22 as originally proposed.

Section 73.21(a)(2)

Comment: Two commenters proposed that § 73.21(a)(2) be amended to state that information protection procedures employed by Federal law enforcement agencies are also deemed to meet the general performance requirement, as some licensee facilities are located on Federal lands and Federal law enforcement officers respond to security events.

Response: In response to this comment, the proposed § 73.21(a)(2) is being modified to provide that information protection procedures employed by law enforcement agencies are presumed to meet the general performance requirements included in that section.

Section 73.22 Protection of Safeguards Information: Specific Requirements

Section 73.22(a) Information To Be Protected

Comment: One comment recommended that the NRC should specify all the types of information and documents that are part of the ''expansion'' of what is considered to be SGI. Clarification is needed as to the meaning and application of undefined terms such as ''additional security measures,'' ''protective measures,'' and ''interim compensatory measures.''

Response: Both the definition of SGI and the description of the specific types of information to be protected as SGI provide sufficient details as to what information constitutes SGI. Any other information to be designated as SGI would be set forth in an order or regulation, in compliance with Section 147 of the AEA. Additionally, the terms ''additional security measures,'' ''protective measures,'' and ''interim compensatory measures,'' are being deleted from the text of § 73.22(a), and therefore need not be defined.

Section 73.22(a)(1) and 73.23(a)(1) Physical Protection

Comment: A commenter suggested that §§ 73.22(a)(1) and 73.23(a)(1) should be narrowed to those documents that contain sufficient detail on the licensee's actual strategies or procedures that, if inadvertently disclosed, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility. The commenter indicated that it is unnecessary to categorize documents as SGI or SGI–M unless the information is specific to the facility or its protective strategy, or unless the protective features cannot be readily observed by an unauthorized individual from outside the Protected Area.

Response: Proposed §§ 73.22 and 73.23 would not protect all information related to the materials and facilities described in those sections. Sections 73.22 and 73.23 are explicitly limited to the protection of SGI and SGI–M. By definition, SGI and SGI–M is information the unauthorized disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of sabotage or theft or diversion of source, byproduct, or SNM. Sections 73.22(a)(1) and 73.23(a)(1) do not expand that limited scope. No changes have been made to the revised proposed rule.

The Commission disagrees that SGI should include only information specific to a facility or its defensive strategy. While such information clearly requires protection, so does certain generic information, such as the design basis threat implementing guidance, which describe in detail the specific operational and tactical capabilities of the hypothetical adversary force more generally described in the design basis threat rule. Those details, which are generically applicable to a number of licensees, could be used to identify licensee security measures, and if disclosed, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility.

Comment: One commenter suggested that § 73.22(a)(1)(ii) be amended to clarify the term ''substantially represent the final design features.'' The commenter suggests, for example, that the language ''substantially represent the final design features such that an engineer or security professional could detect vulnerabilities'' would provide the necessary clarity.

Response: The Commission does not believe the language the commenter proposes would clarify this provision because the inclusion of the phrase ''such that an engineer or security professional could detect vulnerabilities'' adds an unnecessary level of complexity. Determining ''which site specific drawings, diagrams, sketches, or maps substantially represent final design features of the physical security system,'' as stated in the revised proposed rule text, is less subjective. In addition, SGI need not contain information limited to vulnerabilities.

Comment: A commenter recommended that § 73.22(a)(1)(ii) be modified to exclude from the SGI designation site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical security system which are accessible to members of the public. According to the commenter, information relating to security features such as fences, barriers, guard posts, and certain security cameras are in plain view and therefore not appropriate for designation as SGI. The commenter also proposed a similar change to § 73.22(1)(a)(iii) that would apply to alarm system layouts showing the location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms which are accessible to the public.

Response: In response to these comments, the paragraphs cited above are being changed to add the phrase ''not clearly discernible by members of the public'' at the end of each paragraph.

Comment: Two commenters felt that the meaning of ''emergency power sources'' in §§ 73.22(a)(1)(iii) and 73.23(a)(1)(ii) is not sufficiently clear as to whether it included emergency power sources for alarm systems only or any and all emergency power systems. One commenter proposed changing the language to read: ''As installed details of alarm system layouts, location, and electrical design, that if disclosed, could facilitate gaining unauthorized access to special nuclear material, nuclear facilities, or Safeguards Information''.

Response: The Commission has modified the revised proposed rule text in response to this comment by inserting the additional words ''for security equipment'' after the term ''emergency power sources''.

Comment: Two commenters noted, with respect to § 73.22(a)(1)(iv), that not all written physical security orders and procedures need to be SGI, as some security procedures are general or administrative and do not require SGI protection. Moreover, the commenters stated, designation of all security procedures as SGI would delay training new employees in the security force. Therefore, the commenters proposed that § 73.22(a)(1)(iv) be modified to allow flexibility in the control of security procedures. Another commenter proposed amending

§ 73.22(a)(1)(iv) to read ''[w]ritten physical security protective strategy orders and procedures for members of the security organization, duress codes, and patrol routes''.

Response: In response to these comments, the phrase ''Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules'' is modified in the revised proposed rule to read ''Physical security orders and procedures issued by the licensee for members of the security organization detailing duress codes, patrol routes and schedules, or responses to security contingency events''.

Comment: A commenter suggested that it is unnecessary to classify documents as SGI or SGI–M unless the information is specific to the facility and its protective strategy. Therefore, the commenter proposed changing § 73.22(a)(1)(v) to read ''[s]ite-specific design features or evaluations of site-specific plant radio and telephone communications systems revealing vulnerabilities or limitations in operating capability'' in order to narrow the scope of documents to those that contain sufficient detail on the licensee's actual strategies or procedures that, if disclosed, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility.

Response: In response to this comment, the language of § 73.22(a)(1)(v) has been changed in the revised proposed rule to read ''Site specific design features of plant security'' at the beginning of the section. These modifications to the text are not meant to address the broader concern already addressed in response to comments on § 73.22(a)(1) and § 73.23(a)(1). In addition, and as previously stated, the incorporation of such language in this section of the rule does not exclude certain generic information applicable to a number of licensees. Such information could be used, for example, to identify a specific licensee's security measures.

Comment: One comment stated that §§ 73.22(a)(1)(vii), 73.22(a)(1)(viii), and 73.22(a)(1)(ix) reference the safeguards contingency plan and training and qualification plan. The commenter then pointed out that these are now part of the composite security plan that was submitted as a result of the April 29, 2003 Order.

Response: Before the April 2003 Order, power reactor licensees were required to have the following three separate plans: ''physical security plan'', ''safeguards contingency plan'', and ''guard training and qualification plan''. In response to that order, power reactor licensees chose to consolidate these three separate plans into a single ''security plan''. The original proposed rule text has been revised in response to the comment to make clear that the composite physical security plan is considered SGI under § 73.22(a)(1)(i).

Comment: One commenter suggests modifying § 73.22(a)(1)(ix) to read ''[a]ll portions of the composite facility guard qualification and training program that addresses the licensee's protective strategy'', which would delete the language ''plan disclosing features of the physical security system or response procedures'' from the end of that paragraph. The commenter further suggests that, given that most training and qualification plans do not include detailed information, these plans be ''decontrolled'' by the NRC.

Response: In response to this comment, the beginning of § 73.22(a)(1)(ix) has been changed in the revised proposed rule to delete the phrase ''all portions of [the composite facility guard qualification and training plan]''. The Commission acknowledges that there may be some non-SGI in various licensee security plans and accordingly is deleting the phrase ''all portions''. It is not entirely clear what this commenter means in seeking to have this category of information ''decontrolled''. To the extent the commenter wants training and qualification plans to no longer be considered SGI, the Commission is not taking that action. Contrary to what is asserted in support of this request, this category of information includes details warranting protection against unauthorized disclosure.

Comment: One commenter proposes changing the word ''identity'' in § 73.22(a)(1)(x) to ''agency'' or ''organization'' to eliminate any potential confusion that ''identity'' could refer to identification of specific individuals. In addition, the commenter proposes replacing ''safeguards or security emergencies'' with ''security contingency events'' and making clear that ''armament'' refers specifically to the armament of response forces. To have ''armament'' apply to licensees would seem to require licensees to protect as SGI each purchase order for weapons. The commenter further proposes eliminating ''information concerning'' language and using the current part 73 language, and therefore having the subsection read ''[r]esponse plans to specific threats detailing size, disposition, response times, and armament of responding forces.''

Response: The Commission is changing the language of this provision in the revised proposed rule by deleting the phrase ''safeguards or security emergencies'' and inserting the phrase ''security contingency events.'' As so worded, the section emphasizes that the requirement is security-related and also maintains consistency with other regulatory provisions. Also, the word ''identity'' is being deleted from the phrase to avoid the implication that this provision refers to the identification of specific individuals. Finally, the phrase ''of response forces'' is added after the word ''armament'' in the revised proposed rule. The Commission is retaining the language in this paragraph connoting that there could be features of response forces related to or derived from those specified in the rule text which also warrant protection as SGI. The Commission also declines to adopt the commenter's proposed language that would replace the term ''response forces'' with ''response plans'' because security-related plans are addressed elsewhere in §§ 73.22(a)(1).

Comment: One commenter suggested modifying § 73.22(a)(1)(xi) to delete the language ''including the tactics and capabilities required to defend against that threat'' because this is covered elsewhere in the regulations. In addition, the commenter suggested deleting ''or other information'' as it leaves too much room for interpretation. Another commenter suggested deleting references to the design basis threat in this subsection and elsewhere, or creating more prescribed provisions for exactly what is to be covered with respect to design basis threat information, as such information is important to public participation and knowledge.

Response: The phrase ''or other information'' is deleted and the section is reworded to clarify which information related to the design basis threat would be considered SGI. Specifically, the Adversary Characteristics Document and other design basis threat implementing guidance, which describe in detail the specific operational and tactical capabilities of the hypothetical adversary force more generally described in the design basis threat rule, are considered SGI. The phrase ''including the tactics and capabilities required to defend against the threat'' is deleted from the revised proposed rule because it is not necessary. Those tactics and capabilities are described in licensee security plans which are considered to be SGI.

Comment: Several commenters expressed the concern that language in § 73.22(a)(1)(xii) would include engineering and safety analyses and emergency planning procedures or scenarios within SGI protection, and this would suppress information of significant concern to the public. Commenters also suggested that the criterion found in § 73.22(a)(1)(xii) was not sufficiently precise so as to alert a licensee as to the type of information to be protected, that the proposed language ''exposes such a licensee to second-guessing or enforcement action.'' One commenter representing a public interest watchdog group stated that the public has a ''right to know what risks they face from nearby nuclear facilities'' and that ''public participation has proven an effective tool for improving facility performance and safety.'' The commenter expressed concern that if the public does not know what is going on at a facility, it cannot effectively engage the facility and advocate for safety improvements and that if the public was not aware of emergency planning procedures, it would be at risk from an accident or a possible attack against a facility. In addition, the commenter proposes that the NRC should retain the current rule language that allows only ''portions of'' documents to be protected as SGI, in order to maximize the amount of information that the public receives without divulging any protected information.

Another commenter similarly stated that ''it is crucially important that the public has access to information regarding protective measures taken by operators to defend their facilities so that they may be held accountable'' and that the ''broad category of information that is included in these sections, including, especially, safety analyses, emergency planning procedures, and any other information related to the security of a nuclear facility, sharply hinders the public's ability to judge the competency of nuclear operators and the adequacy of their programs to protect their facilities and materials.''

Another commenter expressed concerns that § 73.22(a)(1)(xii) could be used to ''suppress faulty assumptions as the basis for engineering and safety analyses, which is a significant concern to public safety policy analysts and intervenors.''

Other commenters also provided comments with regard to §§ 73.22(a)(1)(xii) and 73.22(a)(2)(viii). One commenter proposed that it should be clear that ''engineering and safety analyses'' mean only such analyses pertinent to physical security and not plant safety, as that information is already public. Industry commenters expressed concern that control of emergency planning procedures as SGI would make coordination with local and state agencies difficult, as well as affected non-governmental entities, and could jeopardize effective and safe operation of a plant. More specifically, one commenter notes broad interpretation of these requirements would require state and local governmental entities who are not in law enforcement but are involved in emergency planning to be verified as ''trustworthy and reliable'' by the licensee in order for the licensee to comply with 10 CFR part 50, Appendix E IV.B.

One commenter recommends revising the wording at the end of § 73.22(a)(1)(xii), proposed as ''by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility,'' to ''significantly increasing the likelihood of radiological sabotage or theft or diversion of source, byproduct, or special nuclear material,'' in order to correspond to the wording used in the definition of SGI.

Response: In response to these comments, the phrase ''related to'' at the beginning of § 73.22(a)(1)(xii) is being changed in the revised proposed rule to ''revealing site specific details of''. The phrase ''unauthorized disclosure of such information'' is changed to ''unauthorized disclosure of such analyses, procedures, scenarios, and information''. These revisions clarify that the analyses, procedures, scenarios, and other information described in this section are considered to be SGI only if they reveal ''site specific details'' about the physical protection of the facility or source material, byproduct material, or SNM. To clarify the fact that ''emergency planning procedures or scenarios'' should remain publicly available, to the extent possible, that phrase is being changed here and elsewhere in the rule text, to ''security-related procedures or scenarios''. However, security-related information, wherever it occurs, including security information that is found within a specific emergency preparedness procedure, could potentially need to be protected as SGI. Also, in order to provide greater specificity in the revised proposed rule text, the phrase ''material or facility'' at the end of the revised proposed rule text is changed to ''source, byproduct, or special nuclear material''.

Certain sections of the current rule language, as well as sections of the revised proposed rule text, refer to ''portions of'' documents to be protected as SGI. For example, current § 73.21(b)(3)(i) designates, in pertinent part, ''[p]ortions of safeguards inspection reports'' to be SGI. Similarly, in the revised proposed rule text, § 73.22(a)(3)(i) refers to ''portions of'' inspection reports as constituting SGI. Therefore, it is not correct that the current rule only allows protection of portions of documents or information as SGI.

Because the Commission is revising the original proposed rule to more closely track the language of Section 147 of the AEA, the Commission is declining to make the suggested change to the end of § 73.22(a)(1)(xii) by substituting ''radiological sabotage'' for the statutory language of ''sabotage.'' The relevant portions of Section 147 refer simply to ''sabotage'' and the Commission is using that term in the revised proposed rule.

The Commission's intent in revising the requirements in part 73 for protection of SGI is not to deprive the public of information or to suppress faulty assumptions in engineering analyses and safety analyses, as some commenters assert. One of the main purposes of these proposed amendments is to provide in 10 CFR part 73 the breadth of information that Section 147 of the AEA requires the Commission to protect. The Commission determined that unauthorized release of this information could result in harm to the public health and safety or the common defense and security.

Comment: One commenter noted that, ''as proposed, § 73.22(a)(1)(xiii) requires 'Information required by the Commission pursuant to 10 CFR 73.55(c)(8) and (9)' to be protected as SGI without explicitly identifying what must be protected as SGI''. The commenter suggested that there is no apparent reason to protect this information as SGI and the requirement should therefore be deleted.

Response: The Commission is deleting this paragraph because the information described in this paragraph would be protected in § 73.22(a)(1)(xi).

Section 73.22(a)(2) Physical Protection in Transit

Comment: One commenter stated that §§ 73.22(a)(2) and 73.23(a)(2) would cover transportation related information that is under the DOT's regulations in 49 CFR part 15, ''Protection of Sensitive Security Information (SSI)''. If implemented in its current form, the commenter continues, these regulations will require licensees to handle, at a minimum, transportation security plan risk assessments as both SSI and SGI or SGI–M, duplicative requirements that

add no discernible benefit. Furthermore, the commenter states, classification of certain transportation related information as SGI will be unworkable. Therefore, the commenter proposes, all of the regulatory agencies should reach consensus on what information should be protected, reduce the number of classifications, and develop a single cohesive nationwide set of information security protection standards that includes a clear definition of each classification. If the NRC does impose duplicative requirements for protection of transportation security-related information in addition to DOT's regulations, the commenter further suggests, the NRC should replace ''transportation physical security plan'' with ''transportation security plan'' to be consistent with DOT regulations, or provide a definition of ''transportation physical security plan.''

Response: The NRC recognizes that transportation of radioactive material may be subject to the requirements of both the DOT and the NRC with respect to protective markings, SSI, SGI, and SGI–M. However, requirements for the protection SSI are not as strict as NRC SGI or SGI–M protection requirements. The NRC believes that the information described in § 73.22(a)(2)(i) requires the higher protection afforded by the designation SGI. Similarly, the information set forth in § 73.23(a)(2)(i) must be protected as SGI–M. Finally, as noted previously, the Commission has replaced the phrase ''transportation physical security plan'' with ''composite physical security plan for transportation'' to distinguish NRC-required plans from others.

Comment: One commenter contended that the new language of § 73.22(a)(2)(ii), ''Routes and quantities for shipments of spent fuel are not withheld from public disclosure,'' no longer assures public access to route and quantity information for shipments of byproduct or source material or nuclear waste. The commenter expresses concern that the NRC does not have the authority to limit access to this information, for which Congress has specifically protected public disclosure in the AEA. The commenter therefore proposes that the NRC ensure that the language in the final rule does not undermine the AEA by narrowing disclosure requirements.

Response: The revised proposed rule would not designate shipping routes and quantities as SGI or SGI–M. However, the rule would designate schedules and itineraries as SGI and SGI–M. Schedules and itineraries combine route and quantity information with specific information about the timing and security of a shipment to create information that, if disclosed, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of sabotage or theft or diversion of nuclear material. Section 147a.(3) of the AEA provides in part that ''[n]othing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel.'' The revised proposed rule text has been revised to be more consistent with the language of Section 147a.(3) of the AEA.

Comment: One commenter proposed removing § 73.22(a)(2)(vii) on the grounds that it is extremely vague and would allow the NRC to protect from public disclosure any ''information concerning the tactics and capabilities required to defend against attempted radiological sabotage, or theft and diversion of formula quantities of special nuclear material, or related information.'' The commenter expressed concern over the NRC's use of ''vague terms'' such as ''any information concerning'' and ''related information'' and suggested that this provision could be used to conceal information about a town's capabilities to respond to an attack on a rail car passing through it.

Response: The language ''related information'' portion of this section has been deleted from the text of the revised proposed rule because it is redundant of the language at the beginning of this section (''information concerning''). The text of the rule does not include the phrase ''any information concerning'' as stated in the comment.

Comment: Commenters expressed concerns that § 73.22(a)(2)(viii) would exempt safety analyses, emergency planning procedures, or other information about the protection of transported materials from public disclosure as SGI. Accordingly, commenters recommended revising or removing § 73.22(a)(2)(viii) in order to ensure that the public has access to emergency procedures and safety analyses information they need to protect their community. A commenter proposed removing the proposed §§ 73.22(a)(2)(viii) and 73.23(a)(2)(iv) and (v) on the grounds that these proposed changes would prevent communities from learning what steps are being taken to protect them and from participating in the process of keeping the community safe. The commenter expressed concerns that these provisions are overly vague in what information may be protected from public disclosure and could result in too much information being concealed from the public.

Response: The Commission recognizes that the public needs information about safety and emergency planning and will continue to make much of that information publicly available. Therefore, the phrase ''emergency planning procedures or scenarios'' is being changed to ''security-related procedures or scenarios''. But a limited amount of safety and emergency planning-related information, if publicly disclosed, could be used to identify security measures for the protection of nuclear facilities and materials, thereby significantly increasing the likelihood of sabotage or theft and diversion. For example, emergency planning information that specifies response times for local law enforcement, or identifies the size, tactics, and capabilities of first responders to a radiological event could be very useful to a potential adversary in planning an attack. Accordingly, that information could conceivably need to be protected as SGI.

The Commission's intent is not to prevent public knowledge of vital safety and emergency information. Hence, the revised proposed rule has been changed in response to comments that it was too broadly worded as originally proposed. The protection required for engineering and safety analyses and security-related procedures or scenarios under § 73.23(a)(1)(x) would be appropriately limited to information that could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source material, byproduct material, or SNM.

Section 73.22(a)(3) Inspections, Audits, and Evaluations

Comment: A commenter objected to what it saw as the broadening of § 73.22(a)(3) and stated that the proposed change lacks specificity and could potentially conceal public health, safety, security, and environmental concerns from public disclosure. The commenter expressed concern that the provision could be interpreted to include and suppress information that rightfully should be brought to the attention of the public and policy makers.

Response: The Commission has eliminated references to specific licensees from the revised proposed rule. This clarifies the scope of the rule

and simplifies the text. The commenter provides no basis for the assertion that the Commission would use revised § 73.22(a)(3) to conceal information from public disclosure. The regulations provide access to individuals who have a ''need to know'' the information and who are trustworthy and reliable. Protecting SGI and SGI–M from unauthorized disclosure does not equate to concealing or suppressing information that should be in the public domain.

Comment: Another commenter suggested that the NRC restore the provision in proposed § 73.22(a)(3)(i) to allow the release of information developed in inspections, audits, and evaluations concerning weaknesses and problems that have been corrected.

This paragraph retains the provision in current § 73.21(b)(3)(i) which designates as SGI portions of safeguards inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in a licensee's or applicant's physical security system. This provision implies that corrected defects, weaknesses, or vulnerabilities will be released.

Response: In response to this comment, the proposed rule is revised in part, to carry over the portion of § 73.21 that provides for the release of information regarding defects, weaknesses, or vulnerabilities after corrections have been made. However, as stated in the revised text, the disclosure of such information is not automatic, and is subject to an assessment taking into account such factors as the results of trend analyses and the impacts of disclosures on other licensees having similar physical security systems. The partial revision of the proposed rule text is consistent with the policy to increase the amount of public information released pursuant to the Security Oversight Process.

Section 73.22(a)(5)

Comment: Two commenters suggested that § 73.22(a)(5) lacked specificity. One commenter expressed concerns that § 73.22(a)(5) was not specific enough to ''allay growing public concerns that the agency could arbitrarily and capriciously further conceal or subordinate significant public health, safety, and security issues to economically shield and benefit the nuclear industry.'' Another commenter suggested that the language of § 73.22(a)(5) was an ''incredible expansion of government secrecy that could allow instances of extreme operational incompetence to go unnoticed by the public.'' That commenter suggested deleting the ''other information'' language to narrow and clarify the rule.

Another commenter proposed making § 73.22(a)(5) reflect the preamble of § 73.22 by stating that orders will only be used to classify information in an emergency when rulemaking is not available.

Response: Section 147 of the AEA explicitly authorizes the Commission to proceed by order or regulation to prohibit the unauthorized disclosure of SGI. Nothing in the AEA limits the use of the Commission's ordering authority to emergency situations. Such a restriction could hinder security and safety in the event the Commission needs to act quickly to protect SGI not already identified in the regulations. The Commission declines to adopt such a limitation. However, the Commission has changed the revised proposed rule language to clarify that any information that would be categorized as SGI under § 73.22(a)(5) would have to be within the scope of Section 147 of the AEA, and would be imposed by a new order or rulemaking.

Section 73.22(b) Conditions for Access

Comment: One commenter remarked that, in the context of § 73.22(b), there is no benefit from imposing different access authorization requirements for nuclear power reactors as compared to other licensees.

Response: In the original proposed rule, access requirements varied depending on whether an individual is to be granted access by a nuclear power reactor licensee or applicant, as set forth in § 73.22(b)(1)(i)(A) or by other licensees or applicants covered by § 73.22, pursuant to § 73.22(b)(1)(i)(B). Such variation was based on Section 149 of the AEA, which required each licensee or applicant for a license to operate a nuclear power reactor to fingerprint each individual permitted access to SGI. The EPAct, however, amended Section 149 to authorize fingerprinting all individuals engaged in an activity subject to regulation by the Commission, licensees, all applicants for a license to engage in Commission-regulated activities, and all individuals who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission. Fingerprints would be submitted to the U.S. Department of Justice for a criminal history check, which would be assessed as part of the background check that provides the basis for a trustworthiness and reliability determination.

Section 73.22(b)(1)

Comment: Several comments stated that §§ 73.22(b)(1)(i)(B) and 73.23(b)(1)(i) in the original proposed rule were unclear as to what is meant by ''comprehensive background check or other means as approved by the Commission.'' One commenter noted that requiring a background investigation has proven to be challenging for transportation companies, because the time required for background investigations has often prevented transportation companies from bidding on some jobs. That commenter suggested that the NRC specify the ''other means'' that would be acceptable for entities implementing an SGI–M program. Another commenter expressed concern that if the ''comprehensive background check'' was similar to the ''Q'' or ''L'' access authorization investigations or checks of 10 CFR part 25, it would impose an intolerable burden because of the time and resources necessary for the completion of such a check, particularly for those entities developing new SGI or SGI–M programs.

Response: As previously discussed, a definition of ''background check'' is now included § 73.2. NRC staff plans to issue further guidance that will include a discussion of acceptable background checks that would satisfy the rule requirements by ''other means'' and support a licensee's trustworthiness and reliability determinations. The requirements for access to SGI are different from the provisions for access to classified information (part 25) or for access under part 95 to Classified National Security Information and/or, Restricted Data, and/or Formerly Restricted Data.

Comment: A commenter expressed the concern that § 73.22(b)(1)(ii)–(vi) in the original proposed rule in combination with § 73.22(b)(2) appears to require licensees to perform a Federal Bureau of Investigation (FBI) criminal history check for NRC personnel. If this is not the case, the commenter proposed that (b)(2) of both sections should be modified to state: ''The individuals described in paragraph (b)(1)(i) through (vi).''

Response: The Commission does not interpret the cited provisions of the original proposed rule set forth by the commenter as requiring licensees to perform FBI criminal history checks for NRC personnel. Section 73.22(b)(3) would exempt governmental individuals from the requirement for a

determination of trustworthiness and reliability, including NRC employees.

Comment: One commenter stated that § 73.22(b)(1)(vii) would require a licensee to demonstrate trustworthiness and reliability for an individual to whom disclosure is ordered pursuant to 10 CFR 2.709(f). The commenter noted that a licensee should not bear the responsibility for making this finding for an intervenor. The commenter also noted that the rule was not clear as to when a presiding officer would have the responsibility to make this determination—when an intervenor wants access to SGI or only if an intervenor appeals a party's determination. For these reasons, the commenter suggested rethinking the application of these criteria to adjudicatory hearing matters and resolving such issues in a separate rulemaking or by issuing Commission orders in each case where controlling the dissemination and use of SGI might be an issue.

Response: The rule is not intended to require licensees to determine whether intervenors in an adjudicatory proceeding are trustworthy and reliable to receive SGI or SGI–M. Presiding officers have the authority to make determinations about information disclosures if a dispute over access to SGI or SGI–M documents arises. Section 73.22(b)(4) and 73.23(b)(4) have been added to the revised rule to make this clear. Sections 2.709(f) and 2.1010(b)(6) have been revised and new §§ 2.336(f) and 2.705(c)(2) have been added to the revised proposed rule to specify procedures to be followed in the event of such a dispute.

Under the procedures set forth in these provisions, when a party or participant in an adjudicatory proceeding seeks production of SGI from another party or participant that refuses to produce it, the presiding officer has the authority to decide the dispute. The presiding officer will make the first determination necessary for access to SGI, which is whether the individual seeking access has the requisite ''need to know'', as defined in 10 CFR 73.2. If so, the presiding officer may order production of the SGI after the second determination is made, namely whether the individual to be authorized access to SGI has been found to be trustworthy and reliable by the NRC Office of Administration, based on a background check (including a criminal history records check and fingerprinting). Procedurally, the presiding officer may issue an order that designates the information as necessary and relevant and that requires the party or participant seeking access to SGI or SGI–M to designate those individuals who would receive it. The order would also require the NRC Office of Administration to determine the trustworthiness and reliability of those individuals designated to receive SGI in accordance with the provisions of §§ 73.22(b) or 73.23(b), as appropriate.

If the NRC Office of Administration concludes that the designated individuals are trustworthy and reliable to receive SGI, the presiding officer would issue a second order requiring production of the SGI or SGI–M under the provisions of a protective order. Presiding officers have the authority to hear appeals on the NRC Office of Administration's trustworthiness and reliability determination.

If parties or participants in an adjudicatory proceeding agree that an intervenor has a ''need to know'' and are willing to share the SGI or SGI–M without seeking a determination on ''need to know'' from the presiding officer, then the parties or participants may do so, provided that a protective order has been issued by the presiding officer and a trustworthiness and reliability determination has been made by the NRC Office of Administration. If the SGI sought by the intervenor is held solely by the licensee or applicant, and not the NRC, the licensee or applicant may provide the SGI to the intervenor under the terms of the protective order. If the SGI is held by both the licensee or applicant and the NRC (''dual holders''), the NRC will provide the SGI to the intervenor, under the terms of the protective order.

Section 73.22(c)(1) Protection While in Use or Storage

Comment: Commenters proposed that § 73.22(c)(1) be amended to authorize SGI to be stored in the Reactor Control Room not in a locked security storage container. The basis for this request is that control rooms are continuously manned and this change would allow rapid access, if necessary, to pertinent SGI material (e.g., controlled operating procedures).

Response: In response to these comments, §§ 73.22(c)(1) and 73.23(c)(1) are being changed to delete the phrase ''Safeguards Information within alarm stations, manned guard posts or ready rooms need not be locked in a locked security storage container.'' A new phrase is being added to state ''Safeguards Information within alarm stations, or rooms continuously occupied by individuals need not be stored in a locked security storage container.''

Section 73.22(c)(2)

Comment: One commenter proposed that § 73.22(c)(2) be modified to allow licensees to mark containers as containing SGI, because this practice ensures that the importance of those containers is clearly understood and because those containers are typically located in areas with no public access.

Response: The Commission is declining to adopt the change proposed by the commenter because marking locked security storage containers to indicate they contain SGI may assist in identifying the location of SGI. The fact that such containers may typically be located in areas without public access is irrelevant because not all individuals in such areas are authorized for access to SGI. An unauthorized individual seeking access to SGI might be aided by such markings, regardless of whether the SGI is stored in areas without public access.

Section 73.22(d)(1)

Comment: One commenter proposed that the term ''first page'' in § 73.22(d)(1) be changed to ''first page or cover sheet'' to allow licensees to continue with current practice which meets the intent of the revised proposed rule.

Response: The Commission is not modifying § 73.22(d)(1) as the commenter suggests because the information specified in § 73.22(d)(1)(i) through (iii) should be noted on the first page of the document itself rather than in a separate document, such as a cover sheet. The Commission does not expect that licensees or applicants must go back and mark documents for which a cover sheet was used for the required information instead of the first page of the document, as set forth in § 73.22(d)(1).

Comment: One commenter suggested that the requirement in § 73.22(d)(1)(i), and a similar provision in § 73.23(d)(1)(i), regarding ''the individual authorized to make a * * * [SGI] determination, and who has determined that the document contains'' SGI is not clear, for example, as to whether training is required or whether a SGI or SGI–M determination requires one or two individuals.

Response: The commenter is correct that the rule does not prescribe specific qualifications for persons who will determine whether or not particular information is SGI or SGI–M. Licensees have an incentive to select and train competent persons to make these determinations, because a finding that a document contains SGI or SGI–M will add to the licensee's document-handling

burdens. At the same time, the Commission recognizes that when there is any doubt about whether information is or is not SGI or SGI–M, there is an incentive to mark it as SGI. This ''err on the safe side'' tendency could lead to unnecessary burdens and over-use of the SGI or SGI–M designations. The Commission will consider making appropriate additions or changes to resolve this problem if it should arise. Such changes might include specifying qualifications for persons who make SGI or SGI–M determinations if experience shows this to be necessary. The number of individuals necessary to make these designations may vary from one licensee to another. The Commission expects that the individual(s) who are ''authorized to make a Safeguards Information determination'' are the same as the individual(s) who ''determined that the document contains Safeguards Information.'' In other words, the individual or individuals making the determination must be authorized to do so.

Comment: A commenter suggested that the requirement to designate the individual making the SGI determination is ''redundant and unnecessary'' for pleadings. The commenter stated that the determination can be attributed to the individual signing the pleading.

Response: The Commission disagrees with this comment, as oftentimes the person making an SGI determination will not be the signatory of a pleading. Section 73.22(d)(1) ensures that the identity of the person making the SGI determination—be it the individual signing the pleading or some other individual—is clear. If the signatory also makes the SGI determination, the document should be marked in accordance with § 73.22(d)(1). The Commission does not view this as redundant or unnecessary and declines to adopt the commenter's suggestion.

Section 73.22(d)(3)

Comment: A commenter questioned whether pleadings filed in an adjudicatory proceeding would be considered correspondence to the NRC requiring portion marking pursuant to § 73.22(d)(3). The commenter stated that SGI in a pleading is ''usually integral to the entire pleading such that removal of such information would render the remainder [of the pleading] of marginal or no use, if released.'' The commenter indicated that substantial effort would be required to portion-mark pleadings containing SGI. Additionally, the commenter concluded that intervenors have a general reluctance to designate a particular piece of information as non-SGI because they ''will be second-guessed by the licensee or NRC staff.'' For these reasons, the commenter stated that there appeared to be little utility added by this requirement.

Response: Pleadings filed in an adjudicatory proceeding before the NRC are considered correspondence and therefore would require portion marking in accordance with § 73.22(d)(3). Attachments and exhibits to pleadings, however, are not considered to be correspondence and, therefore, do not require portion marking. For example, a pleading may attach portions of a security plan as an exhibit. The attached plan would not be required to be portion marked, but instead can be treated in its entirety as SGI. The NRC uses portion marking to ensure that the pleading is made public without the portion-marked SGI. Although the Commission acknowledges that additional effort will be required by participants in adjudicatory proceedings to portion mark pleadings, the Commission does not believe that the burden is undue, especially when compared with the potentially adverse consequences of a malevolent adversary obtaining SGI. Finally, the Commission disagrees with the commenter's conclusions about intervenors' reluctance to designate information as non-SGI. The Commission declines to change § 73.22(d) in response to these comments.

Comment: Several comments were received to the effect that the portion marking requirements of §§ 73.22(d)(3) and 73.23(d)(3) for ''Engineering and safety analyses, emergency planning procedures or scenarios'' would be burdensome and that the portion marking of documents sent to the NRC would impose an unnecessary burden on licensees and should therefore not be required. One commenter noted that the portion marking requirements would be unnecessary because licensees control entire documents as SGI and that the administrative benefit to the NRC would not be worth the substantial burden on licensees.

Response: This comment refers to burden on licensees to portion mark ''Engineering and safety analyses emergency planning procedures or scenarios'' when such information is included in correspondence to or from the NRC. For the reason previously stated, the designation of ''Engineering and safety analyses emergency planning procedures or scenarios'' as SGI has been changed throughout the rule text to ''security-related procedures or scenarios.'' Because many commenters otherwise requested clarification of this category of information, these sections also have been revised to clarify that the analyses, procedures, scenarios, and other information described in this section would be considered SGI only if they reveal ''site-specific details'' about the physical protection of the facility or source, byproduct, or SNM. Licensees and applicants would only be required to portion mark analyses, procedures, or scenarios that contain SGI when included in transmittal documents for correspondence with the NRC.

Comment: Another commenter proposed modifying § 73.22(d)(3) to provide flexibility on portion marking of correspondence to and from the NRC as follows: ''Portion marking of documents or other information is allowed for correspondence to and from the NRC,'' which would replace ''required'' with ''allowed.'' The commenter suggested that this would allow licensees to designate entire documents as SGI without having to mark each paragraph if appropriate.

Another commenter suggested that a document containing SGI should be marked as SGI in its entirety, and that when it is appropriate to produce documents that contain both SGI and non-SGI, attempts should then be made to segregate the SGI into separate sections. The commenter noted that in such cases, it would be reasonable to require portion marking but not in all cases. Therefore, the commenter proposed, the rule must reflect that portion marking is only to be required for documents transmitted to or from the NRC in which significant portions of the document are clearly non-SGI.

Response: In response to comments, § 73.22(d)(3) is being modified to replace the phrase ''Portion marking of documents or other information is required for correspondence to and from the NRC'' with the phrase ''Portion marking is required only for correspondence to and from the NRC (*i.e.*, cover letters, but not attachments) that contains Safeguards Information.'' The NRC declines, however, to amend the revised proposed rule so that portion marking of correspondence to and from the NRC would be optional. Portion marking of such correspondence allows the NRC to release non-SGI to the public.

Sections 73.22(d)(4) and 73.23(d)(3)

Comment: Four commenters suggested that §§ 73.22(d)(4) and 73.23(d)(3) should not require the marking of documents and other matter containing SGI in the hands of contractors and agents of licensees that were produced within one year prior to the effective date of this rule. One commenter suggested that to the extent

that these new requirements are different from the existing ones, the differences are minor and that, therefore, the regulation should not require the conduct of an extensive review of documents produced within the last year prior to the promulgation of a final rule. Another commenter similarly proposed that marking requirements should only be applied to documents generated after the effective date of a final rule and should not be applied retroactively to previously generated documents. One commenter suggested that § 73.22(d)(4) implies that if the document is taken out of storage, even if more than a year old, it must be marked.

Response: The requirement that documents and other matter containing SGI in the hands of contractors and agents of licensees be marked if they were produced within one year prior to the effective date of the rule has been removed from the rule in response to comments. Therefore, the marking requirements set forth in this rule would apply only to documents generated after the effective date of a final rule.

Section 73.22(d)(5)

Comment: Two commenters proposed that § 73.22(d)(5) should be eliminated, as it is redundant to, but inconsistent with, § 73.22(d)(1), which requires material to be marked ''Safeguards Information'' at the top and bottom of each page. One commenter noted that the ''Safeguards Information'' designation required in § 73.22(d)(5) may not alert someone who is not familiar with that initialism to the fact that it is SGI and, therefore, that inconsistency between §§ 73.22(d)(5) and 73.22(d)(1) should be eliminated.

Response: The revised proposed rule has been changed to eliminate the redundancies and inconsistencies identified by the commenter. Section 73.22(d)(5) in the original proposed rule has been renumbered as § 73.22(d)(4) in the revised proposed rule.

Section 73.22(e) Reproduction of Matter Containing Safeguards Information

Comment: One commenter suggested that the new requirement prohibiting digital copiers connected to a network, found at §§ 73.22(e) for SGI and 73.23(e) for SGI–M, is difficult in today's electronic office environment. Another commenter proposed that § 73.22(e) should not prohibit the use of a copier, printer, or scanner connected to the closed network in the ''stand alone'' computer system allowed in § 73.22(g).

Response: The revised proposed rule has been modified to be less prescriptive and more performance-based. Under the revised proposed rule, any equipment may be used to reproduce SGI, provided unauthorized individuals cannot gain access to SGI by accessing, using, or manipulating the equipment (for example, by gaining access to retained memory or using network connectivity to access SGI).

Sections 73.22(f) and 73.23(f) External Transmission of Documents and Material

Comment: One comment noted that the double packaging requirement for external transmittal of SGI, found in §§ 73.22(f) and 73.23(f), although not onerous, is akin to the protection afforded to classified matter. Another commenter proposed that § 73.22(f)(2) be rewritten to state that SGI may be transported by any commercial delivery or courier company that provides service with tracking features, rather than any commercial delivery company that provides ''nationwide overnight service with computer tracking features'' as the original proposed rule reads. The commenter suggests that this would allow licensees to continue to use current trusted local delivery services.

Response: The double packaging requirements of the original proposed rule are necessary to prevent unauthorized individuals from readily identifying that the package contains SGI while in transit, and to prevent recipients from inadvertently disclosing SGI to unauthorized individuals upon receipt. The double packaging requirements have not been changed in the revised proposed rule.

However, the Commission agrees that local delivery services, so long as the carriers have computer tracking capabilities, may be permitted to transport SGI. Computer tracking capabilities are necessary to aid in quickly determining the location of the information so that the risk of unauthorized disclosure may be minimized. Sections 73.22(f)(2) and 73.23(f)(2) have been changed to reflect that nationwide, overnight service would not be a requirement for a commercial delivery company to transport SGI.

Section 73.22(g) Processing of Safeguards Information on Electronic Systems

Comment: One commenter proposed that § 73.22(g) contain a provision permitting transfer of encrypted SGI over a computer network, similar to the proposed § 73.23(g)(2). In addition, a comment received noted that the DOE has an SGI protection plan that was approved by the NRC to satisfy current § 73.21(h) and has a need to retain capabilities for handling SGI as approved, due to a distanced-managed site. This commenter therefore proposes adding a provision to § 73.22(g) to allow the use of other protective measures approved by the NRC pursuant to old § 73.21(h) or new § 73.22(g).

Response: Section 73.22(f)(3) permits electronic transmission of SGI by protected telecommunications circuits (including facsimile) or encryption (Federal Information Processing Standard [FIPS] 140–2 or later).

Section 73.21(b)(1) of the revised proposed rule would explicitly preserve the Commission's authority to require different SGI protection requirements in individual cases. If alternative protection methods can be devised that provide an equivalent level of protection for SGI, the Commission would consider approving those methods on a case-by-case basis.

Section 73.22(i) Destruction of Matter Containing Safeguards Information

Comment: Two commenters expressed concern over § 73.22(i), which contains requirements for the destruction of matter containing SGI. One commenter suggests that § 73.22(i) seemingly permits the use of ''strip shredders'' for destruction if pieces are one-half inch or less and mixed. The commenter states that this is inconsistent with advice given by NRC staff members who believe that a cross-cut shredder must be utilized and proposes that the rule clarify whether the use of ''strip shredders'' is permissible. Another commenter suggested that the wording of § 73.22(i) be modified to specify pieces one-half inch or smaller on a side to provide important clarification of how small the pieces would have to be to constitute destruction.

Response: The revised proposed rule has been changed in response to this comment. The rule would allow the use of strip shredders and other shredders that shred pieces no wider than a quarter of an inch if the pieces are thoroughly mixed.

§ 73.23 Protection of Safeguards Information—Modified Handling: Specific Requirements

Comment: A commenter suggested that establishment and implementation of the SGI–M program by licensees with an existing SGI program is unnecessary.

Response: Persons who establish, implement, and maintain handling, access, and control procedures for SGI described in § 73.22 would have a program sufficient to protect SGI–M

described in § 73.23 and would not need to establish a second or separate SGI–M program. However, special attention would be required when transmitting SGI to ensure proper document marking and handling.

A primary difference between the SGI protection requirements in §§ 73.22 and 73.23 is in the marking of the information. SGI in the former category is marked ''Safeguards Information'' while the latter category is marked ''Safeguards Information—Modified Handling.'' The different markings are associated with different storage requirements. SGI described in § 73.22 must be stored in a locked security storage container, but SGI described in § 73.23 and marked as SGI–M has a less stringent storage requirement—the information must be stored in a locked file drawer or cabinet.

A person who possesses both types of SGI—i.e., that described in §§ 73.22 and 73.23—and who always stores SGI in a locked security storage container under § 73.22(c)(2) would be in compliance with the regulations because that person would achieve the maximum level of protection required by the regulations. But not everyone will possess both types of SGI—some will only possess SGI falling under § 73.23, in which case a locked security storage container would not be required. Thus, when a person with a § 73.22 program sends SGI to a person with only a § 73.23 program, proper document marking would be essential.

Proper marking is necessary when SGI is communicated so that the recipient does not receive a document with markings that would require storage in a container that the recipient does not possess. Without the appropriate document markings, the sender could cause a violation of the regulations.

This commenter implies that the SGI–M designation means the information will be held ''secret,'' which is not the case. Individuals with a ''need to know'' the information who are determined to be trustworthy and reliable may be granted access to SGI. Access to ''secret'' National Security Information is beyond the scope of this rulemaking and is governed by separate requirements.

Comment: One commenter stated that if the NRC believes that information associated with less than 15 grams of SNF or HLW should be protected as SGI, it should be designated as ''SGI–M.'' The commenter also proposed that information associated with the transportation of 15 grams of SNF or HLW should be protected as SGI pursuant to §§ 73.21 and 73.22.

Response: The Commission did not propose to protect the information identified by the commenter as SGI or SGI–M. If in the future the Commission establishes physical security requirements for the transportation of the materials referred to by the commenter, the Commission will determine whether to also require protection of security-related information as SGI or SGI–M in accordance with §§ 73.21(b)(1) and (2).

Comment: A commenter recommended against the creation of the SGI–M category because the category is overly broad, the need for restrictions on such material has not been clearly established, and the risks associated with the release of such information do not justify secrecy. This commenter expressed concerns that holding less-dangerous SGI–M information as secret will decrease accountability and eliminate the public's ability to be aware of and participate in safety matters that concern their communities.

Response: The Commission disagrees that protection of the SGI described in § 73.23 is unnecessary. The information that would be protected under § 73.23 describes security measures and physical protection information related to radioactive materials that could be used in a radiological dispersion device. Securing those materials is vital to the public health and safety and the common defense and security. Protecting detailed information about how those materials are secured is equally vital.

This rulemaking is not intended to decrease the Commission's accountability or unduly burden the public's ability to participate in NRC proceedings. Members of the public are always free to submit their views on safety and security matters by filing a petition for rulemaking under 10 CFR 2.802, by filing a request to institute proceedings to modify, suspend, or revoke a license under 10 CFR 2.206, and by attending public meetings or writing letters to the NRC. In addition, members of the public may comment on rulemakings and environmental impact statements, and where appropriate, file a petition to intervene and/or request a hearing in an adjudicatory matter.

Comment: A commenter questioned the appropriateness of a statement in the original proposed rule implying that the risk of theft of materials covered by § 73.23, particularly special nuclear material, could be low.

Response: Special nuclear material would be addressed by §§ 73.22 and 73.23 and would require different levels of protection based on its form and quantity. The Commission believes that a graded approach based on risk and associated consequences is appropriate. As a result, a higher risk of disclosure or higher consequence due to a malevolent act requires commensurate levels of protection. The same is true whether the assets are source, byproduct, or special nuclear materials.

Comment: One commenter suggested that the NRC, in its final rule, provide greater detail on the criteria for deciding access to SGI–M material. In addition, the commenter suggested that, because of the lower risk status of SGI–M material, the NRC should allow greater access to SGI–M by establishing less rigorous restrictions and easier procedures for public access.

Response: The Commission agrees that SGI–M material presents lesser risks if publicly disclosed than SGI material, but the risks are still significant. Because of those risks, broad public access is not permitted. Only trustworthy and reliable individuals who have a ''need to know'' the information may be authorized access to SGI–M.

The revised proposed rule defines ''background check'' and ''trustworthiness and reliability'' to clarify the Commission's general expectations for granting access to SGI or SGI–M. Specifying discrete qualifying or disqualifying factors is not possible because trustworthiness and reliability determinations and need-to-know determinations must be made on a case-by-case basis after considering all relevant information.

To implement the amendments to section 149 of the AEA contained in the Energy Policy Act of 2005, the revised proposed rule would require fingerprinting and Federal Bureau of Investigation criminal history checks, which would constitute part of the background check used to determine trustworthiness and reliability, before access to SGI.

Comment: One commenter proposed that the NRC modify the preamble to define the exact materials and quantities to which the SGI–M requirements of § 73.23 would apply.

Response: The introductory text to § 73.23 has been revised to define exactly the facilities, materials, and quantities for which the SGI–M requirements of § 73.23 apply. The section would apply to panoramic and underwater irradiators, defined in 10 CFR 36.2, that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source, byproduct, or special nuclear material in greater than or equal to Category 2 quantities of concern; research and test reactors that possess less than a formula quantity of strategic

special nuclear material; and transportation of greater than or equal to Category 1 quantities of concern.

Comment: One commenter stated that § 73.23 would conflict with existing requirements in 49 CFR part 15 with respect to the protection of information associated with transporting radioactive materials. The commenter suggests that if the rule is adopted as proposed, licensees may be contending with two sets of regulations.

Response: The NRC's regulations are not in conflict with DOT regulations. DOT regulations in 49 CFR 172.804 provide that DOT-required security plans ''that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies * * * may be used to satisfy the requirements in this subpart, provided such security plans address requirements specified in this subpart''. Thus, security plans required by the NRC can be developed so that they also comply with DOT requirements.

DOT information protection requirements for transportation security plans are less stringent than the SGI and SGI–M requirements established by this rule. As a general matter, the Commission does not intend that transportation security plans required by the DOT be protected under this rule. However, licensees subject to this rule who would be required by NRC regulations or orders to implement transportation security measures would be required to protect those measures and plans as SGI or SGI–M, as appropriate. Licensees that incorporate NRC-required security measures and procedures into existing DOT-required transportation security plans would be required to protect portions of the transportation security plan under this revised proposed rule. To avoid that result, licensees may wish to keep descriptions of their NRC-required security measures and procedures separate from DOT-required security plans.

Section 73.23(a) Information To Be Protected

Section 73.23(a)(1) Physical Protection

Comment: One commenter objected to § 73.23(a)(1)(i) as too broad in its use of the term ''all portions'' with respect to the NRC's authority to restrict physical security plans that are labeled as SGI–M. The commenter suggested that § 73.23(a)(1)(i) creates an ''unnecessary level of secrecy'' and contends that establishing ''such intense secrecy for a brand new and less dangerous category of information seems completely unwarranted.'' The commenter recommended instead that if portions of the physical security plans can be released to the public, the agency should be permitted to disclose those portions.

Response: The Commission agrees that some portions of a licensee's physical security plan or procedures may be non-SGI and has deleted the phrase ''all portions of'' from revised proposed rule. The Commission disagrees that protection of the SGI described in § 73.23 is unnecessary. The information protected under § 73.23 describes security measures and physical protection programs for radioactive materials that could be used in a radiological dispersion device. Securing those materials is vital to the public health and safety and the common defense and security. Protecting detailed information about how those materials are secured is equally vital.

Comment: One commenter proposed that the NRC clarify the identification of emergency power sources in § 73.23(a)(1)(iii) to apply only to alarm system power sources.

Response: The revised proposed rule would protect information in alarm system layouts and is intended to protect information that identifies emergency power sources for alarm systems. The revised proposed rule text has been changed to clarify this point.

Comment: One commenter suggested that the NRC revise § 73.23(a)(1)(vii) to agree with the wording in § 73.22(a)(1)(ix).

Response: The Commission agrees with the comment and the revised proposed rule has been revised to add the word ''composite'' to § 73.23(a)(1)(vii).

Comment: One commenter proposed the deletion of § 73.23(a)(1)(viii) as it is redundant with other § 73.23(a)(1) subsections.

Response: The commenter did not identify a specific redundancy or point out how the proposed language would cause confusion or other harm. Retaining the provision affords protection for SGI that might not fit squarely under other categories. Consequently, the Commission has not changed the provision in the revised proposed rule.

Comment: Two commenters proposed replacing the phrase ''safeguards or security emergencies'' in § 73.23(a)(1)(ix) with ''security contingency events,'' which is used more frequently. Another commenter suggested that the words ''Information concerning'' in § 73.23(a)(1)(ix) were unclear and suggested that the NRC specify what information concerning response forces qualifies as SGI–M.

Response: The Commission has changed the revised rule to make consistent use of the phrase ''security contingency events.'' The phrase ''information concerning'' in § 73.23(a)(1)(ix) has been changed to ''information relating to.'' The original proposed rule adequately describes the types of information that would be protected by § 73.23(a)(1)(ix) by giving a number of examples of the information the Commission seeks to protect, including response force size, armament of the response forces, and arrival times. Similar information about the operational and tactical capabilities of response forces would be protected by § 73.23(a)(1)(ix). The revised proposed rule has not been revised to provide further examples.

Comment: Three commenters provided comments on § 73.23(a)(1)(x). Two commenters recommended revising the wording at the end of the paragraph to read: ''by significantly increasing the likelihood of radiological sabotage or theft or diversion of source, byproduct, or special nuclear material,'' in order to correspond to the phrase used in the definition of ''SGI'' in the proposed § 73.2. One commenter suggested that withholding such information from disclosure as SGI–M would prevent public knowledge of safety and emergency information that would directly impact nearby communities in the event of an accident, and doing so under the SGI–M provisions would ''allow the agency to apply vague and broad secrecy authority to an already broad and undefined category since NRC does not detail precisely which facilities and materials SGI–M covers.'' Therefore, this commenter recommends that the NRC eliminate this provision and not allow emergency planning and safety reports to be protected from public disclosure under the new SGI–M category.

Response: The revised proposed rule text has been changed in response to the first comment. The wording at the end of § 73.23(a)(1)(x) now corresponds with the definition of SGI in § 73.2.

The Commission disagrees that § 73.23(a)(1)(x) is overly broad, or that it would prevent public knowledge of vital safety and emergency information. The protection that would be required for engineering and safety analyses and emergency planning information under § 73.23(a)(1)(x) is appropriately limited to information that could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and

security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

The Commission recognizes that the public needs information about safety and emergency planning and will continue to make much of that information publicly available. But a limited amount of safety and emergency planning related information, if publicly disclosed, could be used to identify security measures for the protection of nuclear facilities and materials, thereby significantly increasing the likelihood of radiological sabotage or theft and diversion. For example, emergency planning information that specifies response times for local law enforcement, or identifies the size, tactics, and capabilities of first responders to a radiological event could be useful to a potential adversary in planning an attack.

Section 73.23(a)(2) Physical Protection in Transit

Comment: One commenter suggests that, in the final rule, § 73.23(a)(2)(i) use the term ''transportation security plan'' for consistency, rather than ''transportation physical security plan'' as the original proposed rule reads. Another commenter suggests that § 73.23(a)(2)(i) is too broad in that it does not specify what information falls into this category. This commenter recommends that at least some portion of transportation security plans should be available to communities to foster awareness about the safety measures applied to nuclear materials shipments passing through their towns. In addition, the commenter proposes that § 73.23(a)(2)(i) be reworded to clarify that the public will retain access to all information to which it is entitled by the AEA.

Response: The phrase ''transportation physical security plan'' does not appear in the revised proposed rule. The revised proposed rule would require protection of ''the composite physical security plan for transportation'' in § 73.22(a)(2)(i) and ''information regarding transportation security measures, including physical security plans and procedures'' in § 73.23(a)(2)(i). The revision was made in part because not all licensees subject to the rule are explicitly required to have a ''transportation physical security plan.''

The revised proposed rule is intended to protect information detailing the physical security measures and procedures used to protect source, byproduct, and special nuclear material in transit, whether or not those measures and procedures are contained in a document labeled ''transportation security plan.'' Therefore no definition of ''transportation security plan'' or its revised formulations is needed.

The NRC frequently shares general transportation security information with communities and other stakeholders. Licensees may be able to share general information about their security procedures as well, however, the Commission strongly cautions against this practice to avoid an inadvertent disclosure of SGI.

The Commission disagrees that § 73.23(a)(2)(i) needs to be reworded to make clear that the public will retain access to all information to which it is legally entitled. The comment states a truism that need not be incorporated into NRC regulations.

Comment: One commenter suggested that §§ 73.23(a)(2)(ii) and (iii) are not clear in what is considered SGI, for example, if the regulation pertains to a specific shipment or only to the general arrangements for all shipments that may be affected. The commenter stated that, if specific to the shipment, it is burdensome in that it requires face-to-face meetings when such arrangements are normally made over the telephone. In addition, the commenter stated that the phrase ''limitations of communication during transport'' in § 73.23(a)(2)(iii) was not sufficiently clear.

Response: These sections apply to information related to the protection of shipments of certain quantities of source material, byproduct material, and SNM in greater than or equal to Category 1 quantities of concern. The information described in § 73.23(a)(2)(ii) concerns arrangements with and capabilities of local police response forces, and locations of safe havens, whether related to a specific shipment or arrangements for shipments that may be affected. The handling requirements for SGI–M do not mandate ''face-to-face'' meetings. With respect to telephone conversations, § 73.23(f)(3) provides that SGI–M must be transmitted electronically only by protected telecommunications circuits or encryption approved by the NRC except under emergency or extraordinary conditions. To the extent that the commenter is referring to arrangements regarding scheduling and itinerary information, the revised proposed rule text specifies that such information is not considered SGI–M. See 10 CFR 73.23(a)(2)(i). The phrase ''limitations of communication during transport'' in § 73.23(a)(2)(iii) of the original proposed rule (now § 73.23(a)(2)(iv)) has been deleted and replaced by the phrase ''Details of alarm and communication systems, communication procedures, and duress codes.''

Comment: One commenter expressed concerns that § 73.23(a)(2)(v) would exempt safety analyses, emergency planning procedures, or other information about the protection of transported materials from public disclosure as SGI–M. The commenter recommended revising § 73.23(a)(2)(v) in order to ensure that the public has access to emergency procedures and safety analyses information needed to protect communities.

Response: In response to this and other comments, the phrase ''emergency planning procedures or scenarios'' has been changed to ''security-related procedures or scenarios''. The Commission recognizes that the public needs information about safety and emergency planning and will continue to make much of that information publicly available. But a limited amount of safety and emergency planning-related information, if publicly disclosed, could be used to identify security measures for the protection of nuclear facilities and materials, thereby significantly increasing the likelihood of sabotage or theft and diversion. For example, emergency planning information that specifies response times for local law enforcement, or identifies the size, tactics, and capabilities of first responders to a radiological event could be useful to a potential adversary in planning an attack.

The Commission disagrees that this revised proposed rule would prevent public knowledge of vital safety and emergency information. The protection required for the information designated under § 73.23(a)(1)(x) would be appropriately limited to information that could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or SNM.

Section 73.23(a)(3) Inspections, Audits, and Evaluations

Comment: One commenter expressed concerns over the proposed § 73.23(a)(3) and recommended that the NRC add current regulations that allow the public to access SGI–M information about defects and weaknesses at nuclear facilities after they have been corrected. The commenter suggested that the existing provision is useful and logical in maintaining accountability and public confidence, particularly given the lower risk associated with material

in the new SGI–M category. The commenter noted that the NRC proposes to eliminate this provision with respect to SGI information and recommends that the NRC add the provision to the SGI–M regulations.

Response: The Commission agrees with this comment and has revised the proposed rule in part, accordingly. However, as stated in the revised text, the disclosure of such information is not automatic, and is subject to an assessment taking into account such factors as the results of trend analyses and the impacts of disclosures on other licensees having similar physical security systems. The partial revision of the proposed rule text is consistent with the policy to increase the amount of public information released pursuant to the Security Oversight Process.

Section 73.23(h) Decontrolling Information

Comment: One commenter stated that the decision to decontrol information would be a difficult assessment if consideration has to be given to using it in combination with non-SGI, and that detailed guidance and/or training would need to be given. The rule says that the approval to decontrol information can be made by three options: (1) Only by the NRC; or (2) the licensee with NRC approval; or (3) in consultation with the individual that made the original determination, if possible. The commenter stated that having these three options does not make sense, as there should be one ultimate authority that states whether it is permissible to decontrol the information so that there is no ambiguity and all licensees use the same method.

Response: The Commission agrees that the decision to remove information from the SGI category can be difficult. Consideration must be given not only to the nature of the information itself, but to whether public disclosure of that information would identify other SGI. If so, the information should not be decontrolled.

Persons in possession of SGI who are considering decontrolling the information should consult with the NRC, although the revised proposed rule would not require it in every case. Information could be decontrolled without NRC approval after consulting with the individual or organization that originally made the SGI determination, provided the information no longer meets the criteria of this rule. Retaining this option gives licensees and others a measure of flexibility in their SGI-protection procedures.

SGI generated by the NRC would only be decontrolled with NRC approval. This would ensure that NRC orders, guidance, and other regulatory documents would not be inconsistently decontrolled.

Part 76: Certification of Gaseous Diffusion Plants

Comment: One commenter suggested that § 76.113(c) should be revised to provide that information on the security of CAT I SSNM should be protected under 10 CFR parts 25 and 95 as classified information.

Response: The rule language in §§ 73.21 and 73.22 clearly indicates that it would only apply to information that is not classified as Restricted Data or National Security Information. If the specific information is considered to be Restricted Data or National Security Information it would be protected as such and the SGI provisions would not apply. However, the Commission recognizes that the current language in § 76.113(c), which suggests that security information related to formula quantities of strategic special nuclear material would be protected as SGI, may be perceived as inconsistent with the NRC's general practice of treating that information as classified Restricted Data or National Security Information. The revised proposed rule text has been changed to provide clarity.

Comment: One commenter recommended that changes to §§ 76.115(d) and 76.117(c) should be deleted from the revised proposed rule because documents transmitted to gaseous diffusion plants (GDP) by the NRC are protected as classified material and because the classified matter protection program at each GDP already meets or exceeds the protection requirements for SGI, both current and proposed. Therefore, the commenter believes that the current programs at the GDPs provide for adequate protection of sensitive information, that application of the proposed SGI requirements to the GDPs will cause the expenditure of resources with little additional protection of sensitive information, and that, therefore, the proposed revision to §§ 76.115(d) and 76.117(c) is not necessary. Two commenters suggest that §§ 76.115 and 76.117 should refer to §§ 73.21 and 73.23, not § 73.22.

Response: The NRC Staff believes that the proper category for security-related information at the GDPs is SGI. While the GDPs are protecting their security plans and other related documents as classified material, other persons that might obtain the information would have no obligation to protect the security-related information as SGI or as classified material. The NRC does not believe that protection of the security-related information as proprietary under § 2.390 provides adequate protection, particularly if a third party were to somehow obtain the information. The GDPs may continue to protect the security-related information covered by the rule as classified material, however, the information should be properly marked as SGI. This is consistent with the treatment of similar information for part 70 licensees. No changes to the revised proposed rule text are necessary.

Comment: One commenter proposed that § 76.113 be revised to specify whether NRC certificate holders should protect DOE's Unclassified Controlled Nuclear Information (UCNI) information to a level equivalent to SGI or SGI–M. The commenter supports protection of UCNI to an SGI-equivalent level.

Response: Section 76.133 has been changed in the revised proposed rule to make it clear that the information would be protected in accordance with DOE requirements.

Part 150 Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

Comment: One commenter suggested that a provision be added to § 150.15 to indicate that persons in Agreement States remain under the jurisdiction of the NRC's regulations for control of SGI, as the current rule by its terms only provides that persons in Agreement States remain under the jurisdiction of NRC regulations for control of SGI–M, not SGI. The commenter recommends that the NRC should retain full authority over all SGI regulations and therefore recommends that § 150.15(a)(9) be revised in the final rule to include § 73.22.

Response: There are no Agreement State licensees that would possess SGI, only SGI–M. However, the NRC has added § 73.22 to the revised proposed rule to cover the possibility that an Agreement State licensee in the future might need to possess SGI.

Other or Related Issues

Comment: One commenter suggested that although the original proposed rule states that the purpose of the rule is to ''[e]xpand the types of security information covered by the definition of SGI in § 73.21 to include access authorization for background screening'' there is no associated requirement that can be found in either §§ 73.22 or 73.23 for background screening information to be protected as SGI. Another commenter noted that it would fully support changes in regulations on SGI that would preserve access authorizations for appropriate persons when needed, as

well as allow union leadership access to applicable safeguarded information.

Response: The commenter is correct about the lack of an explicit requirement in either §§ 73.22 or 73.23 for ''access authorization for background screening.'' Detailed background screening requirements for determining trustworthiness and reliability are set forth in a licensee's or an applicant's composite physical security plan, which is included in §§ 73.22(a)(1)(i) and 73.23(a)(1)(i) as a type of SGI.

As to the second comment, authorization for access to SGI always considers need because one criterion for granting such access is an established ''need-to-know''. The revised proposed rule preserves the application of the ''need to know'' criterion as a requirement in §§ 73.22(b) and 73.23(b). The issue of access to SGI by agents representing employees of NRC licensees in employment-related grievances has previously been addressed in response to an earlier comment on that subject.

Comments on Information Collection Requirements

Comment: The Office of Management and Budget (OMB) received two comment letters on the proposed information collection requirements associated with §§ 73.21, 73.22, and 73.23. An industry commenter stated that the estimate of the total number of hours needed annually to complete the requirement or request (5,926 or an average of nine hours per recordkeeper) is incorrect. The commenter estimates that initially thousands of hours will be required of each recordkeeper to review and mark the additional SGI or SGI–M documents as required in §§ 73.22(a)(1)(xii) and 73.23(a)(1)(x). In addition, the ongoing requirement of the original proposed rule would also exceed nine hours per recordkeeper.

Response: The average number of hours that would be needed annually to complete the information collection requirement in the original proposed rule of 9 hours per respondent was an average that covered a wide range of entities from nuclear power reactors to irradiators. The calculation of the 9 hours accounted for the range of those affected by the information collection requirement by assuming larger entities would have a larger number of documents to mark than smaller entities. The average burden of 9 hours seems low because there are many more smaller entities in the calculation than larger entities. The burden for power reactors, including implementation and ongoing burden, was approximately 26 hours annually for each power reactor site. It is expected that the information collection burdens for the revised proposed rule will change to reflect the requirements in the revised rule.

Comment: The commenter also disagreed with the following statement in the Abstract portion of the Paperwork Reduction Act Statement in the **Federal Register** notice for the original proposed rule: ''The proposed amendments would be consistent with Commission practices reflected in previously issued orders and advisories.'' According to the commenter, this statement is incorrect because the NRC has not previously directed that all of the information specified in proposed 10 CFR 73.22 be protected as SGI.

Response: The original proposed amendments reflected Commission practices set forth in previously issued orders and advisories, results of the Commission's comprehensive review of security policies and requirements, and comments received in the original proposed rulemaking. Any increased information collection burdens associated with the revised proposed amendments will be accounted for in the calculation of the burden estimate in a new OMB clearance package.

Comment: A commenter suggested that eliminating portion marking requirements for documents containing SGI, and allowing the entire document to be marked as SGI, was a way to minimize the information collection burden.

Response: Under §§ 73.22(d)(3) and 73.23(d)(3), portion marking would only be required for transmittal documents for correspondence with the NRC. For example, cover letters that transmit a security plan or license application are required to be portion marked, but the attached plan or application is not. The burden associated with portion marking these documents is small, and would be outweighed by the benefit of being able to make correspondence with the NRC publicly available.

Comment: A commenter provided two burden estimates for nuclear power reactor implementation of the original proposed rule. The first estimate assumed that the commenter's ''comments or similar clarifications'' would not be accounted for in the final rule. The second estimate assumed the commenter's ''comments or similar clarifications'' would be accounted for in the final rule. The commenter concluded that the estimates showed a ''great and expansive potential for misinterpretation'' of the original proposed rule.

Response: The NRC has revised the original proposed rule language so that potential for misinterpretation would be minimized. The NRC has revised the number of recordkeepers in the OMB clearance package associated with power reactors from 104 to 64. The decrease in recordkeepers reflects multiple reactors at one site sharing SGI documents. The NRC has not included the cost of a dedicated copy machine and dedicated computers for reproducing and processing SGI documents. These costs are not requirements of the revised proposed rule and therefore will not be included in the OMB clearance package.

Comment: One commenter requested that an accurate regulatory analysis and backfit analysis be completed and made available for public comment before the rule is finalized.

Response: The regulatory analysis for the original proposed rule was available for public comment. It has been revised where appropriate in response to those comments and is being made available for comment with this revised proposed rule. A backfit analysis is not required because the requirements of this revised proposed rule that are not in the current 10 CFR 73.21 are being proposed as a matter of adequate protection.

Comment: A commenter requested that the NRC develop a rulemaking associated with the transportation of certain types and quantities of radioactive materials with the DOT.

Response: A coordinated rulemaking with the DOT is not possible given the expedited rulemaking required for the protection of the common defense and security.

Comment: A public meeting was requested by industry to ensure that the NRC staff understands certain concerns, such as the impacts on licensees of implementation of the rule, due to the large number of documents and the breadth of information held by a greater number of licensees.

Response: The expedited rulemaking schedule did not allow the NRC time to hold a public meeting. However, NRC staff had several telephone conversations with the commenter in order to understand the commenter's concerns regarding the OMB clearance package and the regulatory analysis.

Comments on Regulatory Analysis

Comment: One comment stated that the full-compliance baseline assumption in the main analysis of the regulatory analysis is incorrect because it is assumed that all licensee costs were incurred under Commission orders that were never imposed and that this does not account for licensee costs incurred under the rule. In addition, under the ''Pre-Order Analysis'' in the regulatory analysis, the period of compliance is

assumed to be ten years. This time period is too short given the perpetual nature of the rule.

Response: The NRC concurs with the comment that the full-compliance baseline assumption of the main analysis does not capture the costs associated with the rule that have not already been incurred under the current regulation at 10 CFR 73.21 or under Commission orders. Accordingly, the regulatory analysis has been revised to capture these costs under the main analysis. The NRC also concurs that the assumed ten year period of compliance is not long enough for some licensees, such as nuclear power reactors. Therefore, the NRC has calculated the annual costs for nuclear power reactors over a 33-year period. This is the approximate length of plant life remaining for power reactors assuming 100 percent license renewal.

Comment: A commenter stated that the assertion in the regulatory analysis that the original proposed rule would increase public confidence in the NRC and its licensees is not supported by data, nor is there a basis for such a subjective judgment.

Response: In response to the comment that there is no basis for the qualitative benefit of increased public confidence resulting from the revised proposed rule, the NRC has revised the regulatory analysis to exclude either a qualitative value or impact related to public confidence in the NRC or its licensees.

Comment: Another comment on the regulatory analysis is that the backfit analysis in Section XIV only considers the ''main'' analysis and therefore does not consider the perpetual and substantial costs to licensees associated with the rule.

Response: A backfit analysis is not required because the requirements of this rule that are not in the current 10 CFR 73.21 are being proposed as a matter of adequate protection.

Comment: A commenter suggested that the rule be delayed until an accurate regulatory analysis and backfit analysis are completed.

Response: The NRC believes that the revised regulatory analysis is an accurate analysis of the values and impacts associated with the revised proposed rule. The original regulatory analysis was available for public comment and has been revised where appropriate in response to comments. As stated above, a backfit analysis is not required.

Comment: The regulatory analysis should consider the actual substantial cost of implementing the rule and should also quantify the need for SGI–M under § 73.23.

Response: The regulatory analysis accounts for the costs of implementing the revised proposed rule. Assigning a quantitative value to the need for SGI–M under § 73.23 is not possible. However, as discussed in the regulatory analysis, there are substantial qualitative benefits associated with protecting SGI–M under § 73.23.

C. Section-by-Section Analysis

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.4	A new definition of Safeguards Information is added to § 2.4: Safeguards Information means information not classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed control and accounting procedures for the physical protection of special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; detailed security measures (including security plans, procedures, and equipment) for the physical protection of source, byproduct, or special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities; and any other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, the unauthorized disclosure of which, as determined by the Commission through order or regulation, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of sabotage or theft or diversion of source, by product, or special nuclear material.	A definition of Safeguards Information has been added to this section in the revised proposed rule because the term is used in this part. This definition also appears in § 73.2.
2.336(f)(1)	The following paragraph is added to § 2.336, ''General discovery.'' ''In the event of a dispute over disclosure of documents and records including Safeguards Information referred to in Sections 147 and 181 of the Atomic Energy Act, as amended, the presiding officer may issue an order requiring disclosure if—''[the requirements in § 2.336(f)(1)(i) through (iv) are met].	This paragraph is added to the revised proposed rule in response to comments regarding discovery of Safeguards Information in NRC adjudicatory proceedings. Section 2.336(f)(1) applies only in a dispute over disclosure of Safeguards Information. In the absence of a dispute over disclosure, participants in an adjudicatory proceeding may exchange information, including Safeguards Information. However, such disclosures would be subject to a protective order issued by the presiding officer of the proceeding to protect against the unauthorized disclosure of the information.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.336(f)(1)(i)	The following paragraph is added: ''The presiding officer finds that the individual seeking access to Safeguards Information to participate in an NRC adjudication has the requisite ''need to know'', as defined in § 73.2;''	This paragraph makes clear that: (1) ''Need to know,'' as defined in § 73.2, applies in NRC adjudicatory proceedings, and (2) the presiding officer of the proceeding makes the ''need to know'' determination for access to SGI in a dispute over the ''need to know'' determination. In other words, access to Safeguards Information always requires a ''need to know.'' In the specific instance of a dispute over ''need to know'' in an NRC adjudicatory proceeding, the presiding officer makes the ''need to know'' determination as defined in § 73.2.
2.336(f)(1)(ii)	The following paragraph is added: ''The individual has undergone an FBI criminal history check, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable, by submitting fingerprints to the NRC Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, and otherwise following the procedures in § 73.57(d) for submitting and processing fingerprints. However, before an adverse determination by the NRC Office of Administration on an individual's criminal history check, the individual shall be afforded the protections of § 73.57;''	This paragraph requires that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must undergo an FBI criminal history check, including fingerprinting, unless they are exempt from this requirement under §§ 73.22(b)(3) or 73.23(b)(3). Those provisions cross-reference § 73.59, which lists categories of individuals who are exempt from the FBI criminal history and background check requirements for access to Safeguards Information by virtue of their occupational status. This paragraph also extends the protections provided by § 73.57 to participants in NRC adjudicatory proceedings before an adverse determination is made by the NRC Office of Administration on their criminal history check.
2.336(f)(1)(iii)	The following paragraph is added: ''The NRC Office of Administration has found, based upon a background check, that the individual is trustworthy and reliable, unless exempt from the background check requirement pursuant to §§ 73.22(b)(3) or 73.23(b)(3), as applicable. However, before adverse determination by the NRC Office of Administration on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections provided by § 73.57.''	This paragraph requires that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must undergo a background check for trustworthiness and reliability unless exempt from that requirement under §§ 73.22(b)(3) or 73.23(b)(3), which cross-reference § 73.59. This paragraph extends the protections provided by § 73.57 to participants in NRC adjudicatory proceedings before an adverse determination by the NRC Office of Administration on their background checks for trustworthiness and reliability.
2.336(f)(1)(iv)	Participants, potential witnesses, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. The request may also seek to have the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the individual against whom the adverse determination has been made. Within 10 days of receipt of the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.	This paragraph establishes detailed procedures for participants, potential witnesses, and attorneys to appeal a final adverse determination by the NRC Office of Administration on an individual's trustworthiness and reliability determination for access to SGI. Participants, potential witnesses, and attorneys may request that the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the proceeding officer of the proceeding to review the NRC Office of Administration's adverse determination. In addition, this paragraph contains the following requirements: Documentation by the Office of Administration of an adverse determination and the time periods for filing and service of the request for review, and issuance by the presiding officer of a decision on the request for review. The standard for reversal by the presiding officer of the Office of Administration's adverse determination is a finding that the determination constitutes an abuse of discretion.
2.336(f)(2)	The following paragraph is added: ''The presiding officer may include in an order any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel.''	This provision authorizes the presiding officer to prescribe terms and conditions necessary and appropriate to ensure that disclosure of Safeguards Information is limited to authorized individuals.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.336(f)(3)	The following paragraph is added: ''When Safeguards Information protected from unauthorized disclosure under Section 147 of the Atomic Energy Act, as amended, is received and possessed by a participant other than the NRC staff, it must also be protected according to the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.''	This paragraph extends requirements for the protection of Safeguards information in §§ 73.21, 73.22, and 73.23, as applicable, to anyone in possession or receipt of Safeguards Information.
2.336(f)(4)	The following paragraph is added: ''The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.''	This paragraph authorizes the presiding officer of the proceeding to prescribe measures in addition to those described in §§ 73.21, 73.22, and 73.23, as applicable, to prevent the disclosure of Safeguards Information to unauthorized individuals.
2.336(f)(5)	The following paragraph is added: ''In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205.''	This paragraph authorizes civil penalties for disclosure of Safeguards Information in violation of a presiding officer's protective order or orders.
2.336(f)(6)	The following paragraph is added: ''For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issued under Section 161b of the Atomic Energy Act.''	This paragraph authorizes criminal penalties for disclosure of Safeguard Information in violation of a presiding officer's protective order or orders.
2.705(c)(2)	The following paragraph is added to § 2.705, ''Discovery—additional methods.'' ''In the case of documents and records including Safeguards Information referred to in Sections 147 and 181 of the Atomic Energy Act, as amended, the presiding officer may issue an order requiring disclosure if—''	This paragraph is added to the revised proposed rule in response to comments regarding discovery of SGI in NRC adjudicatory proceedings. The paragraph authorizes the presiding officer to issue an order requiring disclosure of certain documents and records, including Safeguards Information, provided that the requirements noted and discussed below are met.
2.705(c)(2)(i)	The following paragraph is added: ''The presiding officer finds that the individual seeking access to Safeguards Information in order to participate in an NRC proceeding has the requisite '' need to know,'' as defined in § 73.2'';	This provision makes clear that a ''need to know,'' as defined in § 73.2, applies to an individual seeking access to SGI in order to participate in an NRC proceeding. The presiding officer of the proceeding makes the ''need to know'' determination for access to SGI in a dispute over the ''need to know'' determination. In other words, access to Safeguards Information always require a ''need to know.'' In the specific instance of a dispute over the ''need to know'' in an NRC adjudicatory proceeding, the presiding officer makes the ''need to know'' determination as defined in § 73.2.
2.705(c)(2)(ii)	The following paragraph is added: ''The individual has undergone an FBI criminal history check, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable, by submitting fingerprints to the NRC Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and otherwise follow the procedures in § 73.57(d) for submitting and processing fingerprints. However, before an adverse determination by the NRC Office of Administration on an individual criminal history check, the individual shall be afforded the protections of 73.57; and''	This paragraph requires that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must under go an FBI criminal history check, including fingerprinting, unless they are exempt from this requirement under §§ 73.22(b)(3) or 73.23(b)(3). Those provisions cross-reference § 73.59, which lists categories of individuals who are exempt from the FBI criminal history and background check requirements for access to Safeguards Information by virtue of their occupational status. This paragraph also extends the protections provided by § 73.57 to participants in NRC adjudicatory proceedings before an adverse determination is made by the NRC Office of Administration on their FBI criminal history check.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.705(c)(2)(iii)	The following paragraph is added: ''NRC Office of Administration has found, based upon a background check, that the individual is trustworthy and reliable, unless exempt §§ 73.22(b)(3) or 73.23(b)(3) However, before an adverse determination by the NRC Office of Administration on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections provided by § 73.57.''	This paragraph provides that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must under go a background check for trustworthiness and reliability unless exempt from this requirement under §§ 73.22(b)(3) or 73.23(b)(3). Those provisions cross-reference § 73.59, which lists categories of individuals who are exempt from the FBI criminal history check and background check requirements for access to SGI by virtue of their occupational status. This paragraph also extends the protections provided by § 73.57 before an adverse determination by the NRC Office of Administration on a background check for trustworthiness and reliability.
2.705(c)(2)(iv)	The following paragraph is added: ''An individual seeking to participate in an NRC adjudicatory proceeding for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the individual against whom the adverse determination has been made. Within 10 days of receipt the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.''	This paragraph establishes detailed procedures for an individual seeking access to SGI in order to participate in an NRC adjudicatory proceeding to appeal a final adverse determination by the NRC Office of Administration on trustworthiness and reliability for access to SGI. The paragraph contains the following requirements: Documentation by the Office of Administration of an adverse determination and the time periods for filing and service of the request for review, responding to the request, and for issuance of a decision by the presiding officer on a request for review. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion.
2.705(c)(3)	The following paragraph is added: ''The presiding officer may include in an order any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel.''	This provision authorizes the presiding officer to prescribe terms and conditions necessary and appropriate to ensure that disclosure of Safeguards Information is limited to authorized individuals.
2.705(c)(4)	The following paragraph is added: ''When Safeguards Information protected from unauthorized disclosure under Section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the NRC staff, it must also be protected according to the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.''	This paragraph extends requirements for protection of Safeguards Information in § §73.21, 73.22, and 73.23, as applicable, to anyone in possession of Safeguards Information.
2.705(c)(5)	The following paragraph is added: ''The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.''	This paragraph authorizes the presiding officer of the proceeding to prescribe measures in addition to those described in §§ 73.21, 73.22, and 73.23, as applicable, to prevent disclosure of Safeguards Information to unauthorized individuals.
2.705(c)(6)	The following paragraph is added: ''In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205.''	This paragraph authorizes civil penalties for disclosure of Safeguards Information in violation of a presiding officer's protective order or orders.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.705(c)(7)	The following paragraph is added: ''For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issue under section 161b of the Atomic Energy Act.''	This paragraph authorizes criminal penalties for disclosure of Safeguards Information in violation of a presiding officer's protective order or orders.
2.709(f)	This subsection of § 2.709, ''Discovery against the NRC staff'' has been revised and subdivided as noted below.	This paragraph has been revised in response to comments regarding discovery of SGI in NRC adjudicator proceedings. It has been subdivided in the revised proposed rule for clarity. This paragraph continues to apply to discovery documents and records including Safeguards Information, against the NRC staff.
2.709(f)(1)	This paragraph reads: ''In the case of requested documents and records, (including Safeguards Information referred to in Section 147 and 181 of the Atomic Energy Act, as amended) exempt from disclosure under § 2.390, the presiding officer may issue an order disclosure to the Executive Director of Operations or delegate of the Executive Director for Operations, to produce the documents or records (or any other order issued ordering productions of the document or records) if—''	This paragraph sets forth the circumstances in which § 2.709(f) applies. As in the original proposed rule, § 2.709(f) establishes procedures for the discovery against the NRC staff of documents and records, including Safeguards Information, which are exempt from disclosure under § 2.390, ''Public inspections, exemptions, requests for withholding.''
2.709(f)(1)(i)	The following is added: ''The presiding officer finds that the individual seeking access to Safeguards Information to participate in an NRC adjudication has the requisite ''need to know'', as defined in § 73.2;'' The phrase ''but whose disclosure is found by the presiding officer to be necessary to a proper decision in the proceeding'' has been deleted from § 2.709(f).	This paragraph makes clear that: (1) ''Need to know,'' as defined in § 73.2, applies in NRC adjudicatory proceedings, and (2) the presiding officer of the proceeding makes the ''need to know'' determination for access to SGI in a dispute over the ''need to know'' determination. In other words access to Safeguards Information always requires a ''need to know.'' In the specific instance of a dispute over ''need to know'' in an NRC adjudicatory proceeding, the presiding officer makes the ''need to know'' determination as defined in § 73.2.
2.709(f)(1)(ii)	The following paragraph is added: ''The individual has undergone an FBI criminal history check, unless exempt §§ 73.22(b)(3) or § 73.23(b)(3), by submitting fingerprints to the NRC Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, and otherwise following the procedures in § 73.57(d) for submitting and processing fingerprints. However, before an adverse determination by the NRC Office of Administration on an individual's criminal history check the individual shall be afforded the protections provided by § 73.57; and''	This paragraph makes clear that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must undergo an FBI criminal history check, including fingerprinting, unless they are exempt from this requirement under §§ 73.22(b)(3) or 73.23(b)(3), which cross-reference § 73.59. Section 73.59 lists categories of individuals who are exempt from the FBI criminal history and background check requirements for access to Safeguards Information by virtue of their occupational status. This paragraph extends the protections provided by § 73.57 to participants in NRC adjudications before an adverse determination by the NRC Office of Administration on their FBI criminal history check.
2.709(f)(1)(iii)	The following paragraph is added: ''The NRC Office of Administration finds, based upon a background check, that the individual is trustworthy and reliable, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable. However, before an adverse determination by the NRC Office of Administration on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections provided by § 73.57.''	This paragraph makes clear that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must undergo a background check for trustworthiness and reliability unless exempt from this requirement under §§ 73.22(b)(3) or 73.23(b)(3), as applicable. These provisions cross-reference § 73.59, which lists categories of individuals who are exempt from the FBI criminal history check and background check requirements for access to SGI by virtue of their occupational status. This paragraph extends the protections provided by § 73.57 to participants in NRC adjudications before an adverse determination by the NRC Office of Administration on their background checks.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.709(f)(1)(iv)	The following paragraph is added: Participants, potential witnesses, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. The request may also seek to have the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the individual against whom the adverse determination has been made. Within 10 days of receipt of the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.	This paragraph establishes detailed procedures for participants, potential witnesses, and attorneys to appeal a final adverse determination by the NRC Office of Administration on an individual's trustworthiness and reliability determination for access to SGI. Participants, potential witnesses, and attorneys may request that the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the proceeding officer of the proceeding to review the NRC Office of Administration's adverse determination. In addition, this paragraph contains the following requirements: Documentation by the Office of Administration of an adverse determination and the time periods for filing and service of the request for review, and issuance by the presiding officer of a decision on the request for review. The standard for reversal by the presiding officer of the NRC Office of Administration's final adverse determination is a finding that the determination constitutes an abuse of discretion.
2.709(f)(2)	The following paragraph is added: "The presiding officer may include in an order any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in a proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel."	This provision authorizes the presiding officer to prescribe terms and conditions necessary and appropriate to ensure that disclosure of Safeguards Information is limited to authorized individuals.
2.709(f)(3)	The following paragraph is added: "When Safeguards Information protection from unauthorized disclosure under Section 147 of the Atomic Energy Act, as amended, is received and possessed by a participant other than the NRC staff, it must also be protected according to the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable."	This paragraph extends requirements for protection of Safeguards Information in §§ 73.21, 73.22, and 73.23, as applicable, to anyone in possession of Safeguards Information.
2.709(f)(4)	The following paragraph is added: "The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved."	This paragraph authorizes the presiding officer of the proceeding to prescribe measures in addition to those described in §§ 73.21, 73.22, and 73.23, as applicable to prevent disclosure of Safeguards Information to unauthorized individuals.
2.709(f)(5)	The following paragraph is added: "In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205."	This paragraph authorizes civil penalties for disclosure of Safeguards Information in violation of a presiding officer's protective order or orders.
2.709(f)(6)	The following paragraph is added: "For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order under Section 161b of the Atomic Energy Act."	This paragraph authorizes criminal penalties for disclosure of Safeguards Information in violation of a presiding officer's protective order or orders.
2.1010(b)(6)	This paragraph of § 2.1010, "Pre-License application presiding officer" has been reorganized and subdivided. The paragraph begins as follows: "Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential parties, interested government participants, and parties in a proceeding, or to their qualified witnesses and counsel."	This paragraph is revised in response to comments regarding discovery of SGI in NRC adjudicatory proceedings. It has been subdivided for clarity. As in § 2.1010(b)(6) of the original proposed rule, this paragraph authorizes the Pre-License Application Presiding Officer to resolve disputes over disclosure of Safeguards Information.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.1010(b)(6)(i)	The following paragraph is added: ''The Pre-License Application Presiding Office may issue an order requiring disclosure of Safeguards Information if—''	This paragraph authorizes the Pre-License Application Presiding Officer to issue an order requiring disclosure of Safeguards Information if the requirements in the subsequent provisions are met.
2.1010(b)(6)(i)(A)	The following paragraph is added: ''The Pre-License Application Presiding Officer finds that the individual seeking access to Safeguards Information in order to participate in an NRC adjudication has the requisite ''need to know,'' as defined in § 73.2'';	This paragraph makes clear that (1) ''need to know'', as defined in § 73.2, applies in the context of NRC adjudicatory proceedings, and (2) the presiding officer of the proceeding makes the ''need to know'' determination for access to SGI in a dispute over the ''need to know'' determination. In other words, access to Safeguards Information always requires a ''need to know.'' In a dispute over ''need to know'' in an NRC adjudicatory proceeding, the presiding officer makes the ''need to know'' determination as that term is defined in § 73.2.
2.1010(b)(6)(i)(B)	The following paragraph is added: ''The individual has undergone an FBI criminal history check, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable by submitting fingerprints to the NRC Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, and otherwise following the procedures in § 73.57(d) for submitting and processing fingerprints. However, before an adverse determination by the NRC Office of Administration on an individual's criminal history check, the individual shall be afforded the protections of § 73.57;''	This paragraph requires that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must undergo an FBI criminal history check, including fingerprinting, unless they are exempt from this requirement under §§ 73.22(b) or 73.23(b). Those provisions cite § 73.59, which lists categories of individuals who are exempt from the FBI criminal history check and background requirements for access to Safeguards Information by virtue of their occupational status. This paragraph also extends the protections provided by § 73.57 to participants in NRC adjudications before an adverse determination by the NRC Office of Administration on their FBI criminal history checks.
2.1010(b)(6)(i)(C)	The following paragraph is added: ''A finding by the NRC Office of Administration, based upon a background check, that the individual is trustworthy and reliable, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable. However, before an adverse determination on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections provided by § 73.57.''	This paragraph makes clear that individuals seeking access to Safeguards Information in order to participate in an NRC adjudicatory proceeding must undergo a background check for trustworthiness and reliability unless exempt from this requirement under §§ 73.22(b)(3)(b)(3) or 73.23(b)(3). Those provisions contain a cross-reference to § 73.59, which lists categories of individuals who are exempt from the FBI criminal history check and background check requirements for access to Safeguards Information by virtue of their occupational status. This paragraph extends the protections provided by § 73.57 to participants in NRC adjudications before an adverse determination by the NRC Office of Administration on their background checks for trustworthiness and reliability.
2.1010(b)(6)(i)(D)	Participants, potential witnesses, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. The request may also seek to have the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the individual against whom the adverse determination has been made. Within 10 days of receipt of the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.	This paragraph establishes detailed procedures for participants, potential witnesses, and attorneys to appeal a final adverse determination by the NRC Office of Administration on an individual's trustworthiness and reliability determination for access to SGI. Participants, potential witnesses, and attorneys may request that the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the proceeding officer of the proceeding to review the NRC Office of Administration's adverse determination. In addition, this paragraph contains the following requirements: documentation by the Office of Administration of an adverse determination and the time periods for filing and service of the request for review, responding to the request, and for issuance of a decision by the presiding officer. The standard for reversal by the presiding officer of the NRC Office of Administration's final adverse determination made by the NRC Office of Administration.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
2.1010(b)(6)(ii)	The following provision is added: ''The Pre-License Application Presiding Officer may include in an order any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c) and to their qualified witnesses and counsel.''	This provision authorizes the Pre-License Application Presiding Officer to prescribe terms and conditions necessary to insure that disclosure of Safeguards Information is limited to authorized individuals.
2.1010(b)(6)(iii)	The following paragraph is added: ''When Safeguards Information protected from unauthorized disclosure under Section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a party other than the NRC staff, it must also be protected according to the requirement of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.''	This paragraph extends requirements for protection of Safeguards Information in §§ 73.21, 73.22, and 73.23, as applicable, to anyone in possession of Safeguards Information.
2.1010(b)(6)(iv)	The following paragraph is added: ''The Pre-License Application Presiding Officer may also prescribe additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.''	This paragraph authorizes the Pre-License Application Presiding Officer to prescribe measures in addition to those described in §§ 73.21, 73.22, and 73.23 as applicable, to prevent disclosure of Safeguards Information to unauthorized individuals.
2.1010(b)(6)(v)	The following paragraph is added: ''In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act of 1954, as amended, may be subject to a civil penalty imposed under § 2.205.''	This paragraph authorizes civil penalties for disclosure of Safeguards Information in violation of a protective order or orders.
2.1010(b)(6)(vi)	The following paragraph is added: ''For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order under Section 161b of the Atomic Energy Act of 1954, as amended.''	This paragraph authorizes criminal penalties for disclosure of Safeguards Information in violation of a protective order or orders.
30.32(j)	The following phrases are deleted: ''in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security who prepares a physical security plan, security procedures for emergencies, or guard qualification and training procedures,'' and ''the plans, procedures, and other related.'' The phrase ''subject to the requirements of part 73 of this chapter'' is added.	The deletions are made to simplify the original proposed rule text and make clear that applicants must protect all SGI and SGI–M, not just that contained in physical security plans, security procedures for emergencies, or guard qualification and training procedures. The addition to the text makes clear that not all applicants for a part 30 license would be subject to physical security or information security requirements.
30.34(i)	The following phrase is deleted: ''physical security plans, security procedures for emergencies, guard qualification and training procedures, and other related.'' The word ''are'' is changed to ''is.''	This change conforms this section with the requirements of § 30.32(j).
40.31(m)	A new first sentence is added: ''Each applicant for a license for the possession of source material at a facility for the production of uranium hexafluoride shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.'' A new second sentence is added: ''Each applicant for a license for source material subject to the requirements of part 73 of this chapter shall protect unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable.''	This change clarifies that applicants for licenses for the production of uranium hexafluoride would be required to protect security information as SGI in accordance with §§ 73.21 and 73.22. Other source material licensees must protect SGI and SGI–M in accordance with §§ 73.21, 73.22, and 73.23, as applicable.
40.41(h)	The phrase ''physical security plans, security procedures for emergencies, guard qualification and training procedures, and other related'' is removed. The word ''are'' is changed to ''is.''	The change corrects a verb tense and also simplifies the text to make clear that applicants would be required to protect all SGI and SGI–M not just that contained in physical security plans, security procedures for emergencies, or guard qualification and training procedures.
50.34(e)	The section is revised to read ''Each applicant for a license to operate a production or utilization facility shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable.''	This change is made to simplify the revised proposed rule text and make clear that applicants would be required to protect all SGI and SGI–M, not just that contained in physical security plans, security procedures for emergencies, or guard qualification and training procedures.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
50.54(v)	The following phrase is deleted: ''Physical security, safeguards contingency and guard qualification and training plans and other related.'' The word ''are'' is changed to ''is.''	This change is to conform with the change in § 50.34(e).
52.17(d)	The addition of this section requires applicants for early site permits under this part to protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.	This change is made in concert with the change to §§ 52.47 and 52.79 to require applicants for standard design certifications and combined licenses to protect SGI from unauthorized disclosure.
60.21(d)	The word ''as'' is deleted. The phrase ''the detailed security measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, the security organization personnel training and qualification plan, and other related security information'' is replaced with ''and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.''	This change is made to simplify the revised proposed rule text and make clear that applicants would be required to protect all SGI and SGI–M, not just that contained in physical security, safeguards contingency, or guard qualification and training plans. The change also reflects that applicants under Part 60 would be required to protect classified information.
60.42(d)	The phrase ''the detailed security measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, the security organization personnel training and qualification plan, and other related security information'' is replaced with ''Safeguards Information.'' A new sentence is added: ''The licensee shall ensure that classified information is protected in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.''	This change conforms this section to the requirements of § 60.21(d).
63.21(d)	A cross-reference to § 73.23 is added. The word ''as'' is deleted. The phrase ''the detailed security measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, and the security organization personnel training and qualification plan, and other related Safeguards Information'' is replaced with ''as applicable, and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.''	This change is made in concert with the change to part 60 to reflect protection of the same type of information for part 60 and part 63 applicants.
63.42(e)	A cross-reference to § 73.23 is added. The phrase ''the detailed security measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, and security organization personnel training and qualification plan, and other related'' is removed. The phrase ''and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable'' is added.	This change conforms this section to the requirements of § 63.21(d).
70.22(l)	The section is revised to read ''Each applicant for a license shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable, and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.''	This change is made to simplify the rule text and make clear that all SGI and SGI–M would have to be protected, not just that contained in physical security, safeguards contingency, or guard qualification and training plans. The change also reflects that applicants under part 70 would be required to protect classified information.
70.22(o)	This paragraph is deleted	This paragraph is eliminated as it is no longer necessary in light of the change to § 70.22(l).
§ 70.32(j)	The phrases ''a formula quantity of strategic'' and ''physical security, safeguards contingency, and guard qualification and training plans and other related'' are deleted. The word ''are'' is changed to ''is.'' The phrase ''and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable'' is added.	The deletions are made to simplify the revised proposed rule text and make clear that all SGI and SGI–M would have to be protected, not just SGI or SGI–M contained in physical security, safeguards contingency, or guard qualification and training plans. There is also a change to correct verb tense. The deletions are made to simplify the revised proposed rule text and make clear that all SGI and SGI–M would have to be protected, not just SGI or SGI–M contained in physical security, safeguards contingency, or guard qualification and training plans.
70.32(l)	The paragraph is deleted	This paragraph is eliminated as it is no longer necessary in light of the change to § 70.32(j).
71.11	The phrase ''spent fuel'' is changed to ''irradiated reactor fuel.'' The word ''a'' is added before ''critical mass.''	This change corrects a grammatical error and makes the terminology consistent with that used in 10 CFR part 73.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
72.212(b)(5)(v)	The phrase ''receives, transfers, and possesses power reactor spent fuel, power reactor-related Greater than Class C (GTCC) waste, and other'' is changed to ''receives and possesses power reactor spent fuel and other.''	This change recognizes that generally licensed independent spent fuel storage installations are not authorized to transfer SNF pursuant to § 72.120, nor are such facilities authorized to possess Greater than Class C waste.
73.2	Definitions of the new terms ''background check'' and ''quantities of concern'' are added. The revised proposed rule states; ''Background check includes, at a minimum, a criminal history check, verification of identify, employment history, education, and personal references. Individuals engaged in activities subject to regulation by the Commission, applicants for licenses to engage in Commission-regulated activities, and individuals who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission are required under § 73.57 to conduct criminal history checks before granting access to Safeguards Information. A background check must be sufficient to support the trustworthiness and reliability determination so that the person performing the check and the Commission have assurance that granting individuals access to Safeguards Information does not constitute an unreasonable risk to the public health and safety or the common defense and security.''	The term ''background check'' replaces the term ''comprehensive background check'' to more clearly distinguish the background check requirements for access to SGI from other regulations requiring a ''background investigation'' for other purposes (10 CFR 73.56, ''Personnel access authorization requirements for nuclear power plants). In additional criminal history check, including fingerprinting, is included as part of the background check because the background check establishes the overall trustworthiness and reliability of an individual for access to SGI. The response to comments on the definition of ''background check'' contains more details on this definition.
	The definition of ''quantities of concern'' reads: '' 'Quantities of Concern' means the quantities of the radionuclides meeting or exceeding the threshold limits set forth in Table I–1 of Appendix I of this part.''	The term ''quantities of concern'' is being added to the revised proposed rule because the term now appears in new ''Appendix I to part 73, Category 1 and Category 2 Radioactive Materials, Table I–1—Quantities of Concern Threshold Limits.'' As defined, the term would mean the quantities of the radionuclides meeting or exceeding the threshold limits set forth in the table.
	The revised proposed rule would amend definition of ''need to know'' to read: '' 'Need to know' means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, licensee, applicant, or certificate holder employment.''	The definition of the term ''need to know'' is amended to make clear that the term applies to licensees, applicants, certificate holders, and participants in adjudications.
	In an adjudication, ''need to know'' means a determination by the originator of the information that (a) the information is necessary to enable the proposed recipient to proffer and/or adjudicate a specific contention in that proceeding, and (b) the proposed recipient of the specific Safeguards Information possesses demonstrable knowledge, skill, training, or education to effectively utilize the specific Safeguards Information in the proceeding. Where the information is in the possession of the originator and the NRC staff (dual possession), whether in its original form or incorporated into another document by the recipient, the NRC staff makes the determination. In the event of a dispute regarding ''need to know'' determination, the presiding officer of the proceeding makes the determination.	The definition of ''need to know'' has two parts to add specificity to the definition. The first part defines ''need to know'' determinations outside of adjudications. The second part defines ''need to know'' determinations in the context of adjudications.
73.2 Cont	The definition of ''Safeguards Information'' is amended to add the phrases ''licensee's or applicant's,'' ''the physical protection of,'' and ''within the scope of Section 147 of the Atomic Energy Act of 1954, as amended,'' to change the phrase ''radiological sabotage'' to ''sabotage,'' and to remove the word ''otherwise.''	The definition of ''SGI'' is changed in order to provide clarification that SGI is information that identifies a ''licensee's or applicant's'' detailed control and accounting procedures for the physical protection of special nuclear material and includes only information ''within the scope of Section 147 of the Atomic Energy Act of 1954, as amended.
	The definition of ''trustworthiness and reliability'' has been revised by deleting the original proposed definition and substituting ''Trustworthiness and reliability are characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of Safeguards Information to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security.''	The definition of ''trustworthiness and reliability'' is changed in response to comments that it was not sufficiently clear.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.8(b)	Section (b) is updated to read: "The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.21, 73.22, 73.23, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.56, 73,57, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and appendices B, C, and G."	This paragraph is updated to include all of the approved information collection requirements contained in part 73.
73.21(a)(1)(i)	This paragraph is reorganized and edited to read: "Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in § 73.22 related to: Power reactors; a formula quantity of strategic special nuclear material; transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel; uranium hexafluoride production facilities; fuel fabrication facilities; uranium enrichment facilities; independent spent fuel storage installations; and geologic repository operations areas."	This paragraph is changed in response to comments to more clearly set out which facilities, materials, and licensees are subject to the requirements of § 73.22. The paragraph is reorganized for clarity.
73.21(a)(1)(ii)	This paragraph is reorganized and edited to read: "Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in § 73.23 related to: Panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source, byproduct, or special nuclear material in greater than or equal to Category 2 quantities of concern; research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance; and transportation of greater than or equal to Category 2 quantities of concern."	This subsection is changed in response to comments to more clearly set out which facilities, materials, and licensees are subject to the requirements of § 73.23. The paragraph is reorganized for clarity. This paragraph has been drafted to be consistent with orders previously issued by the Commission, e.g., Panoramic and Underwater Irradiator Security Orders, RAMQC Transportation Orders, Manufacturer and Distributor Security Orders, Increased Controls Orders.
73.21(a)(2)	The word "Federal" is added to the list of law enforcement officials and the cross reference is changed from "§ 73.21(a)(i)" to "§ 73.21(a)(1)." The word "deemed" is changed to "presumed."	In response to a comment, this paragraph is amended to provide that information protection procedures used by Federal police are presumed to meet the general performance requirement of § 73.21(a)(1). The word "deemed" is changed to "presumed" to be consistent with § 73.21(b)(1), which preserves the Commission's authority to impose different SGI handling requirements on any person who produces, receives, or acquires SGI. The cross-reference to § 73.21(a)(i) is changed to § 73.21(a)(1) to correct a typographical error.
73.21(b)(1)	The phrase "Safeguards Information handling requirements" is changed to "Safeguards Information protection requirements." The phrase "or in addition to" is added. The cross-reference to §§ 73.21(a)(1) and (2) are deleted and reference to "this part" is substituted.	This change clarifies that the Commission may impose information protection requirements different from or in addition to those specified in part 73 on any person who produces, receives, or acquires SGI, provided the Commission's action is within the scope of its authority under Section 147 of the Atomic Energy Act of 1954, as amended.
73.21(b)(2)	A new section is added: "The Commission may require, by regulation or order, that information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended related to facilities or materials not specifically described in §§ 73.21, 73.22 or 73.23 be protected under this part."	This paragraph is added to indicate that the Commission may impose the requirements of part 73 on facilities or materials not specifically described in §§ 73.21, 73.22, or 73.23, provided the Commission's action is within the scope of Section 147 of the Atomic Energy Act of 1954, as amended.
73.22	The phrase "licensees authorized to possess" is deleted. The phrase "and fuel cycle facilities" is deleted and replaced with "uranium hexafluoride production facilities, fuel fabrication facilities, and uranium enrichment facilities; independent spent fuel storage installations; and geologic repository operations areas."	The introductory text to § 73.22 is changed to conform with the changes in § 73.21(a)(1)(i). The change specifically identifies which fuel cycle facilities are subject to the requirements of § 73.22.
73.22(a)	The phrase "non-public" is added. The phrase "protective measures, interim compensatory measures, additional security measures, and the following as applicable" is deleted.	The first change clarifies that only non-public security-related requirements are to be protected as SGI. The second change more closely tracks the current rule language in § 73.21(b)(1).
73.22(a)(1)	The section is revised to read "Information not classified as Restricted Data or National Security Information related to physical protection, including: "	References to specific licensees are eliminated. The original proposed rule language inappropriately limited the scope of the section. The revision clarifies the scope of the revised proposed rule and simplifies the rule text.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.22(a)(1)(i)	The phrase ''All portions of'' is deleted	This paragraph, which, as originally proposed, would have protected ''all portions'' of a composite physical security plan for a site, is amended in response to comments that such plans may contain a mix of safeguards and non-SGI. The NRC acknowledges that there may be some non-SGI in various licensee security plans and accordingly has deleted the phrase ''all portions'' in the revised proposed rule text.
73.22(a)(1)(ii)	The phrase ''not easily discernible by members of the public'' is added.	The phrase ''not easily discernible to members of the public'' is added to reflect that aspects of a licensee's or applicant's physical security system that can be readily observed by members of the public are not necessarily considered SGI.
73.22(a)(1)(iii)	The phrases ''for security equipment'' and ''not easily discernible by members of the public'' are added.	The phrase ''for security equipment'' is added in response to comments requesting clarification of which emergency power sources are referred to in the rule. The phrase ''not easily discernible to members of the public'' is added to reflect that aspects of a licensee's or applicant's alarm system layouts that can be readily observed by members of the public are not necessarily considered SGI.
73.22(a)(1)(iv)	The phrase ''Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules'' is revised to read ''Physical security orders and procedures issued by the licensee for members of the security organization detailing duress codes, patrol routes and schedules, or responses to security contingency events'';	This paragraph, which, as originally proposed, covered only written physical security orders and procedures, is amended so that it would not be limited to written security orders and procedures. The paragraph is also changed to clarify that it would apply to physical security orders and procedures written by the licensee. In addition, the revised proposed rule replaces ''patrol routes'' with ''patrol routes and schedules.'' The phrase ''safeguards or security emergencies'' is changed to ''security contingency events'' to emphasize that the requirement is security-related, and to maintain consistency with other regulatory provisions.
73.22(a)(1)(v)	The phrase ''On-site and off-site communications systems in regard to their use for security purposes'' is revised to read ''Site-specific design features of plant security communications systems.''	This paragraph, which, as originally proposed, would have protected ''[o]n-site and off-site communications systems in regard to their use for security purposes,'' is amended in the revised proposed rule to read ''[s]ite-specific design features of plant security communications systems,'' in response to a comment that licensees cannot and should not control information describing off-site communications systems. The revised proposed rule would require protection only of information regarding on-site communications systems.
73.22(a)(1)(vii)	The phrase ''physical security plans, safeguards contingency plans'' is changed to ''security plans, contingency measures.''	This change uses broader language so that SGI protection is not limited to formal security plans or contingency plans. Not all licensees will have formally designated plans. The goal is to protect information about the physical security system and security procedures, whether or not they are contained in a single written plan.
73.22(a)(1)(viii)	The phrase ''All portions of'' is deleted. The phrase ''safeguards contingency plan'' is changed to ''safeguards contingency plan/measures.''	This paragraph, which, as proposed, would have protected ''all portions'' of a composite safeguards contingency plan, is amended in response to comments that such plans may contain a mix of safeguards and non-SGI. The NRC acknowledges that there may be some non-SGI in various licensee security plans and accordingly deleted the phrase ''all potions.'' The revision also protects information about contingency measures not contained in a formal contingency plan.
73.22(a)(1)(ix)	The phrase ''All portions of'' is deleted. The phrase ''guard qualification and training plan'' is changed to ''guard qualification and training plan/measures.''	This paragraph, which, as originally proposed, would have protected ''all portions'' of a composite guard qualification and training plan, is amended in response to comments that such plans may contain a mix of safeguards and non-SGI. The NRC acknowledges that there may be some non-SGI in various licensee security plans and accordingly deleted the phrase ''all portions.'' The revised proposed rule would also protect information about guard training not contained in a formal training and qualification plan.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.22(a)(1)(x)	The phrase ''Information concerning onsite or offsite response forces, including size, identity, armament, and arrival times of such forces committed to respond to security emergencies'' is revised to read ''Information relating to onsite or offsite response forces, including size, armament of response forces, and arrival times of such forces committed to respond to security contingency events;''	This paragraph is reworded slightly for clarification. The phrase ''safeguards or security emergencies'' is changed to ''security contingency events'' to emphasize that the requirement is security-related, and to maintain consistency with other regulatory provisions.
73.22(a)(1)(xi)	The phrase ''The elements and characteristics of the Design Basis Threat in a level of detail greater than as specified in § 73.1 or other information that would disclose the Design Basis Threat, including the tactics and capabilities required to defend against that threat'' is revised to read: ''The Adversary Characteristics Document or other implementing guidance associated with the Design Basis Threat in § 73.1;''	As originally proposed, this section referred generically to ''information that would disclose the details of the Design Basis Threat.'' The section has been reworded to explicitly identify the information that would be protected under the revised proposed rule. The Design Basis Threat is set out in its entirety in § 73.1. The information protected is the Adversary Characteristics Document and other Design Basis Threat implementing guidance, which contain detailed descriptions of the operational and tactical capabilities of the hypothetical adversary force more generally described in the Design Basis Threat rule.
73.22(a)(1)(xii)	The phrase ''related to the physical protection'' at the beginning of the original proposed rule text is changed to ''revealing site-specific details.'' The phrase ''unauthorized disclosure of such information'' is changed to ''unauthorized disclosure of such analyses, procedures, scenarios, or other information.'' In addition, the phrase ''emergency planning'' is deleted and is replaced with ''security-related.'' The phrase ''material or a facility'' at the end of the original proposed rule text is changed to ''source, byproduct, or special nuclear material.''	This paragraph is revised in response to comments that the section was too broadly-worded as proposed. The revision clarifies that the analyses, procedures, scenarios, and other information described in this section are considered SGI only if they reveal ''site-specific details'' about the physical protection of the facility or source, byproduct, or special nuclear material. The substitution of ''security-related'' for ''emergency planning'' is made to clarify that emergency preparedness plans should remain publicly available, unless a specific emergency preparedness procedure contains information which could potentially need to be protected as SGI.
73.22(a)(1)(xiii)	This paragraph is deleted	This paragraph is deleted as unnecessary. The information this section would have protected is protected under § 73.22(a)(1)(xi).
73.22(a)(2)	The word ''otherwise'' and the phrase ''protection of'' are deleted.	The words ''protection of'' are deleted to correct a grammatical error in the original proposed rule. The word ''otherwise'' is deleted to simplify the revised proposed rule text.
73.22(a)(2)(i)	The phrase ''All portions of the composite transportation physical security plan'' is changed to ''The composite physical security plan for transportation;''	This paragraph, which, as proposed, would have protected ''all portions'' of a composite physical security plan for transportation, is amended in response to comments that such plans may contain a mix of SGI and non-SGI. The NRC acknowledges that there may be some non-SGI in various licensee security plans and accordingly deleted the phrase ''all portions.''
73.22(a)(2)(ii)	The section is revised to read ''Schedules and itineraries for specific shipments of source material, byproduct material, high-level nuclear waste, or irradiated reactor fuel. Schedules for shipments of source material, byproduct material, high-level nuclear waste, or irradiated reactor fuel are no longer controlled as Safeguards Information 10 days after the last shipment of a current series'';	This section has been changed to more closely track the relevant statutory language in Section 147 of the AEA, and to reflect the NRC's practice of decontrolling shipment schedules and itineraries after completion of the shipment.
73.22(a)(2)(vi)	The phrase ''safeguards or security emergencies'' is changed to ''security contingency events.''	This paragraph is reworded slightly for clarification. The phrase ''safeguards or security emergencies'' is changed to ''security contingency events'' to emphasize that the requirement is security-related, and to maintain consistency with other regulatory provisions.
73.22(a)(2)(vii)	The phrase ''radiological sabotage'' is changed to ''sabotage.'' The phrase ''irradiated reactor fuel'' is added.	The word ''radiological'' is deleted because the definition of SGI relates broadly to sabotage, not only ''radiological sabotage.'' The addition of ''irradiated reactor fuel'' makes the terminology of this paragraph consistent with that used elsewhere in 10 CFR part 73.
73.22(a)(2)(viii)	The phrase ''and other information'' is added. The phrase ''unauthorized disclosure of such information'' is changed to ''unauthorized disclosure of such analyses, procedures, scenarios, or other information.'' The phrase ''such material'' at the end of the original proposed rule text is changed to ''source, byproduct, or special nuclear material.''	This paragraph is revised in response to comments that the section was too broadly worded as proposed. The revision clarifies that the analyses, procedures, scenarios, and other information described in this section are considered SGI only if they reveal site-specific details about the physical protection of the facility or source, byproduct, or special nuclear material.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.22(a)(3)	The section is revised to read ''Information not classified as National Security Information or Restricted Data pertaining to safeguards and security inspections and reports, including:''	References to specific licensees are eliminated. The original proposed rule language inappropriately limited the scope of the section. The revisions clarify the scope of the revised proposed rule and simplify the rule text.
73.22(a)(3)(ii)	The phrase ''after the investigation has been completed'' is changed to ''after corrective actions have been completed.''	This paragraph is changed to reflect that NRC will release general investigation reports after corrective action has been taken, unless the information is properly withheld under the Freedom of Information Act. Reports of investigation will not be released before corrective action is taken because the reports could be used to exploit security deficiencies.
73.22(a)(4)	The word ''paragraph'' is changed to ''section.'' The words ''as defined'' are changed to ''as set forth.''	This paragraph is changed to correct a grammatical error.
73.22(a)(5)	The phrase ''Other information'' is changed to ''Other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended.'' The phrase ''material or a facility'' at the end of the original proposed rule text is changed to ''source, byproduct, or special nuclear material or a facility.''	This paragraph is changed in response to comments that it was too broadly-worded as proposed. The change makes clear that the Commission retains the authority to issue further orders or regulations requiring the protection of categories of information not described in the regulations, provided the information still falls within the cope of Section 147 of the Atomic Energy Act of 1954, as amended.
73.22(b)	This paragraph has been revised and reorganized in the revised proposed rule for clarity. However, the conditions of access to SGI—established need to know, FBI criminal history check, and background check to determine trustworthiness and reliability—have not changed. The background check to determine trustworthiness and reliability contained in § 73.22(b)(1)(i)(A) of the original proposed rule is in § 73.22(b)(2) of the revised proposed rule. The exemptions from criminal history and background checks contained in § 73.22(b)(1)(i)–(vi) are cross-referenced in § 73.22(b)(3) of revised proposed rule. The specific exemptions are listed in § 73.59.	The structure of this paragraph has been revised for clarification. These revisions are intended to make clear that no one would have access to SGI without first establishing a ''need to know''. They are intended to make clear that unless an individual is exempt by virtue of his or her occupational status all individuals would be required to undergo an FBI criminal history check and a background check to determine trustworthiness and reliability before obtaining access to SGI.
73.22(b)(1)	This section has been revised and simplified. It now reads in its entirety: ''Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established ''need to know'' for the information and has undergone a Federal Bureau of Investigation criminal history check using the procedures set forth in § 73.57.''	This paragraph has been revised to require an established ''need to know'' and an FBI criminal history check before access to SGI. There would be no exception to the 'need to know' requirement. All exemptions to the FBI criminal history and background check requirements are now contained in § 73.22(b)(3)(i)–(vii).
73.22(b)(2)	This section now reads: ''In addition, a person to be granted access to SGI must be trustworthy and reliable, based on a background check or other means approved by the Commission.''	The paragraph has been revised to clarify that individuals are subject to a background check before they must be granted access to SGI. The determination that an individual is trustworthy and reliable would be based upon a background check. The background check for trustworthiness and reliability would be in addition the FBI criminal history check. The term ''background check'' is defined in §73.2.
73.22(b)(3)	This section provides that §73.59 lists the categories of individuals who are exempt from the requirements of § 73.22(b)(1) & (2) by virtue of their occupational status.	This paragraph provides that § 73.59 lists the categories of individuals who would be exempt from a FBI criminal history check requirement in § 73.22(b)(1) and the background check to determine trustworthiness and reliability requirements in § 73.22(b)(2) by virtue of their occupation status. These individuals are not exempt from the ''need to know'' requirement.
73.22(b)(4)	This section has been added. It reads: ''For persons participating in an NRC adjudicatory proceeding other than those identified in § 73.9, the ''need to know'' determination shall be made by the originator of the Safeguards Information upon receipt of a request for access to the Safeguards Information. Where the information is in the possession of the originator and the NRC staff (dual possession), whether in its original form or incorporated into another document by the recipient, the NRC staff makes the determination. In the event of a dispute regarding the ''need to know'' determination, the presiding officer of the proceeding shall determine whether the ''need to know'' findings in § 73.2 can be made.''	This paragraph was added to clarify when the need to know determination would be made and who would determine whether a participant in an NRC adjudicatory proceeding has a ''need to know.''

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.22(b)(5)	This paragraph was § 73.22(b)(3) in the original proposed rule. The phrase ''except as set forth in paragraph (b)(1)'' has been deleted and replaced with ''except as set forth in this section.''	The change of the phrase ''as set forth in paragraph (b)(1)'' to ''as set in this section'' results from the restructuring of § 73.22(b).
73.22(c)(1)	The phrase ''Safeguards Information within alarm stations, continuously manned guard posts or ready rooms need not be locked in a locked security storage container'' is changed to ''Safeguards Information within alarm stations, or rooms continuously occupied by authorized individuals need not be stored in a locked security storage container.''	This paragraph is revised to make clear that SGI could be left outside of a locked security storage container if attended by individuals authorized access to SGI. The original proposed rule could have been interpreted to allow unauthorized persons access to SGI.
73.22(c)(2)	The phrase ''so as to prevent disclosure to an unauthorized individual not authorized access to Safeguards Information'' is changed to ''so as to prevent disclosure to an individual not authorized access to Safeguards Information.'' The word ''may'' is changed to ''shall.''	The word ''unauthorized'' is removed because it was redundant. The word ''shall'' is replacing ''may'' because it is a requirement that locked security storage containers do not identify contents as SGI.
73.22(d)(1)	The phrase ''must be marked 'Safeguards Information' '' is changed to ''must be marked to indicate the presence of such information.'' The phrase ''to indicate the presence of protected information'' is deleted from the end of the first sentence. The word ''each'' in the last sentence is changed to ''the.''	This paragraph is revised in response to comments that the proposed document-marking language was too prescriptive. The changes are intended to allow more flexibility in document marking. The change from ''each'' to ''the'' is to conform this paragraph with § 73.23(d)(1).
73.22(d)(1)(iii)	The word ''would'' is changed to ''will''	The word ''would'' is changed to ''will.''
73.22(d)(2)	The phrase ''In addition to the 'Safeguards Information' markings'' is changed to ''In addition to the markings.'' The phrase ''transmittal letters or memoranda'' is changed to ''any transmittal letters or memoranda to or from the NRC,'' and ''e.g.'' is changed to ''i.e.''	This paragraph is revised in response to comments that the proposed language was too prescriptive. The changes are intended to allow more flexibility in document marking.
73.22(d)(3)	The phrase ''Portion marking of documents or other information is required for correspondence to and from the NRC'' is changed to ''Portion marking is required only for correspondence to and from the NRC (i.e., cover letters, but not attachments) that contains Safeguards Information.'' The word ''transmittal'' is added before ''document.''	This paragraph is revised in response to comments seeking clarification of which documents require portion marking. The intent of the revised section is to require portion marking only for cover letters and similar documents that transmit correspondence to or from the NRC. Attachments to the transmittal document do not need to be portion marked. This requirement would enable the NRC to better identify some of its security-related regulatory activities to the public because it will be administratively easier to redact and disclose portion-marked transmittal documents.
73.22(d)(4)	This paragraph as proposed is deleted and substituted with a revision of the proposed § 73.22(d)(5). The revised proposed rule § 73.22(d)(4) reads ''Marking of documents containing or transmitting Safeguards Information shall, at a minimum include the words 'Safeguards Information' to ensure identification of protected information for the protection of facilities and material covered by 10 CFR 73.22.''	This paragraph is deleted from the revised proposed rule in response to comments opposing the requirement to remark SGI that existed before the effective date of a final rule.
73.22(d)(5)	The proposed paragraph was revised and moved to § 73.22(d)(4).	The paragraph is reworded and renumbered as § 73.22(d)(4) in the revised proposed rule. The revision requires that future document markings include the words ''Safeguards Information'' ensure easy identification and a level of consistency among those required to mark such information.
73.22(e)	The phrase ''If Safeguards Information is reproduced on a digital copier that would retain Safeguards Information in its memory, then the copier may not be connected to a network'' is changed to ''Equipment used to reproduce Safeguards Information must be evaluated to ensure that unauthorized individuals cannot access Safeguards Information (e.g., unauthorized individuals cannot access SGI by gaining access to retained memory or network connectivity).''	This paragraph is revised to provide more general instructions on reproduction of SGI. The original proposed rule limited the instructions to digital copiers. The revision applies a performance-based standard to any equipment used to reproduce SGI.
73.22(f)(2)	The phrase ''nationwide overnight'' is deleted	This paragraph is revised so that commercial delivery companies transporting SGI do not have to provide nationwide overnight service. SGI may be transported by trusted, local carriers, so long as the carrier has computer tracking capabilities.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.22(f)(3)	This paragraph has been revised to read: ''Except under emergency or extraordinary conditions, Safeguards Information shall be transmitted outside an authorized place of use or storage only by (a) NRC approved secure electronic devices, such as facsimiles or telephone devices, provided that transmitters and receivers implement processes that will provide high assurance that Safeguards Information is protected before and after the transmission or (b) electronic mail through the internet, provided that (i) the information is encrypted by the NRC-approved encryption modules and algorithms; (ii) the information is produced by a self contained secure automatic data process system; and (iii) transmitters and receivers implement the information handling processes that will provide high assurance that Safeguards Information is protected before and after transmission. Physical security events required to be reported pursuant to § 73.71 are considered to be extraordinary conditions.''	The paragraph has been revised and updated to more accurately reflect information security requirements.
73.22(g)(1)	The word ''may'' is changed to ''shall'' in the third sentence.	The phrase ''shall be'' is replacing ''may be'' to clarify that stand-alone computers or computer systems are required not to be physically or in any other way connected to a network accessible by users who are not authorized access to SGI.
73.22(g)(3)	The word ''automated'' is deleted	The word ''automated'' unnecessarily appeared in the original proposed rule and has been deleted.
73.22(i)	The phrase ''tearing into small pieces'' is deleted from the second sentence. The third sentence is change from ''Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed'' to ''Piece sizes no wider than one quarter inch composed of several pages or documents and thoroughly mixed are considered completely destroyed.'' The word ''must'' is changed to ''shall.''	This paragraph is revised to eliminate redundant language and to clarify that document destruction results in piece sizes no wider than one-quarter inch, thoroughly mixed. Changing the word ''must'' to ''shall'' conforms this paragraph with § 73.23(i).
73.23	The first sentence is deleted and replaced with ''This section contains specific requirements for the protection of Safeguards Information related to panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufactures and distributors of items containing source, byproduct, or special nuclear material in greater than or equal to Category 2 quantities of concern; transportation of more than 1000 TBq (27,000 Ci) but less than or equal to 100 grams of spent nuclear fuel; research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance; and transportation of greater than or equal to Category 2 quantities of concern.'' In the second sentence, the word ''protection'' is replaced by ''handling.''	This section is changed in response to comments requesting that the rule more clearly set out which facilities, materials, and licensees and subject to the requirements of § 73.23. It has been drafted to be consistent with orders previously issued by the Commission, e.g., Panoramic and Underwear Irradiator Security Orders, RAMQC Transportation Orders, Manufacturer and Distributor Orders, Increased Control Orders. The word ''handling'' is used to conform the sentence with the paragraph.
73.23(a)	The phrase ''non-public'' is added. The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	The words ''non-public'' are added for clarification. The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling'' to better distinguish SGI–M, needing modified protection, from SGI for reactors and fuel cycle facilities that require a higher level of protection.
73.23(a)(1).	This section is revised to read ''Information not classified as Restricted Data or National Security Information related to physical protection, including:''	References to specific licensees are eliminated. The original proposed rule language improperly limited the scope of the section. The revision clarify the scope of the revised proposed rule and simplify the rule text.
73.23(a)(1)(i)	The phrase ''All portions of'' is deleted	This paragraph, which, as originally proposed, would have protected ''all portions'' of a composite physical security plan, is amended in response to comments that such plans may contain a mix of SGI and non-SGI. The NRC acknowledges that there may be some non-SGI in various licensee security plans and accordingly deleted the phrase ''all portions'' in the revised proposed rule.
73.23(a)(1)(ii)	The phrase ''not easily discernible by members of the public'' is added.	The phrase ''not easily discernible to members of the public'' is added to reflect that aspects of a licensee's or applicant's alarm system layouts that can be readily observed by members of the public are not necessarily considered SGI.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.23(a)(1)(iii)	The phrases ''for security equipment'' and ''not easily discernible by members of the public'' are added.	The phrase ''for security equipment'' is added in response to comments requesting clarification of which emergency power sources are referred to in the rule. The phrase ''not easily discernible to members of the public'' is added to reflect that aspects of a licensee's or applicant's alarm system layouts that can be readily observed by members of the public would not necessarily be considered SGI.
73.23(a)(1)(iv)	The phrase ''Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules'' is revised to read ''Physical security orders and procedures issued by the licensee for members of the security organization detailing duress codes, patrol routes and schedules, or responses to security contingency events'';	This paragraph is revised to clarify that it applies to orders and procedures issued by the licensee regarding certain security activities.
73.23(a)(1)(v)	The phrase ''On-site and off-site communications systems in regard to their use for security purposes'' is revised to read ''Site-specific design features of plant security communications systems'';	This paragraph is revised in response to comments that the original proposed rule was overly broad. This paragraph now requires protection of site-specific design features of facility communications systems.
73.23(a)(1)(vii)	The words ''The composite'' are added at the beginning of the section. The phrase ''guard qualification and training procedures'' is changed to ''guard qualification and training plan/measures.''	This paragraph is revised to more closely track the language in § 73.22(a)(1)(ix). Also, the revision protects information about guard training not contained in a formal training and qualification plan.
73.23(a)(1)(ix)	The phrase ''Information concerning offsite response forces, including size, identity, armament, and arrival times of such forces committed to respond to safeguards or security emergencies'' is revised to read ''Information relating to onsite or offsite response forces, including size, armament of response forces, and arrival times of such forces committed to respond to security contingency events; and''	The paragraph is reworded slightly for clarification. The phrase ''safeguards or security emergencies'' is changed to ''security contingency events'' to emphasize that the requirement is security-related, and to maintain consistency with other regulatory provisions.
73.23(a)(1)(x)	The phrase ''related to the physical protection of'' at the beginning of the original proposed rule text is changed to ''revealing site-specific details of.'' The phrase ''unauthorized disclosure of such information'' is changed to ''unauthorized disclosure of such analyses, procedures, scenarios, and information.'' In addition, the phrase ''emergency planning'' is deleted and is replaced with ''security-related.'' The phrase ''material or a facility'' at the end of the original proposed rule text is changed to ''source, byproduct, or special nuclear material''.	This paragraph is revised in response to comments that the section was too broadly worded as proposed. The revision clarifies that the analyses, procedures, scenarios, and other information described in this section are considered SGI only if they reveal ''site-specific details'' about the physical protection of the facility or source, byproduct, or special nuclear material''. The substitution of ''security-related'' for ''emergency planning'' is made to clarify that emergency preparedness plans should remain publicly available, unless a specific emergency preparedness procedure contains information which could potentially need to be protected as SGI.
73.23(a)(2)	This section is revised to read ''Information not classified as Restricted Data or National Information related to the physical protection of shipments of more than 1000 Tbq (27,000 Ci) but less than or equal to 100 grams of spent nuclear fuel, source material and byproduct material in Category 2 quantities of concern, and special nuclear material in less than a formula quantity (except for those materials covered under § 73.22), including:''	The language is revised to more precisely define which types of information would be protected under the revised proposed rule. The word ''otherwise'' is removed to simplify the revised proposed rule text.
73.23(a)(2)(i)	The phrase ''security features of a transportation physical security plan'' is changed to ''transportation security measures, including physical security plans and procedures, immobilization devices, and escort requirements, more detailed than NRC regulations.'' The phrase ''Scheduling and itinerary information may be shared with others on a ''need to know'' basis and is not designated as Safeguards Information-Modified Handling'' has been deleted from this paragraph of the revised proposed rule.	This paragraph is revised so that it more accurately describes the type of information that would be protected. The original proposed rule would have required protection of a ''transportation physical security plan,'' but not all licensees subject to this section will have such a plan. The revised language is broader and would cover ''information regarding transportation security measures, including physical security plans and procedures * * *''

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.23(a)(2)(ii)	The text that appeared in this paragraph of the original proposed rule is renumbered to § 73.23(a)(2)(iii). In its place, the following paragraph has been added: ''Scheduling and itinerary information for shipments (scheduling and itinerary information for shipments that are inherently self-disclosing may be decontrolled after shipment departure. Scheduling and itinerary information for shipments that are not inherently self-disclosing may be decontrolled 2 days after the shipment is completed. Scheduling and itinerary information used for the purpose of preplanning, coordination, and advance notification may be shared with others on a ''need to know'' basis and need not be designated Safeguards Information-Modified Handling);''	This paragraph has been added to include protection of information associated with transportation of radioactive materials in greater than or equal to Category 1 quantities of concern.
73.23(a)(2)(iii)	Due to renumbering, this paragraph now reads: ''Arrangements with and capabilities of local police response forces, and locations of safe havens;'' The paragraph reading: ''Limitations of communications during transport,'' which appeared in this paragraph of the original proposed rule has been deleted.	This paragraph was renumbered from (ii) to (iii).
73.23(a)(2)(iv)	In the revised proposed rule this paragraph reads: ''Details of alarm and communication systems, communication procedures, and duress codes;''	This paragraph has been added to include protection of information associated with the transportation of radioactive material in greater than or equal to Category 1 quantities of concern.
73.23(a)(2)(v)	The phrase ''safeguards or security emergencies'' is changed to ''security contingency events; and''	This paragraph, which as (iv) in the original proposed rule, is reworded slightly for clarification in the revised proposed rule. The phrase ''safeguards or security emergencies'' is changed to ''security contingency events'' to emphasize that the requirement is security-related, and to maintain consistency with other regulatory provisions.
73.23(a)(2)(vi)	The phrase ''emergency planning'' is deleted and is replaced with ''security-related.'' The phrase ''and other information'' is added after ''security-related procedures or scenarios.'' The phrase ''unauthorized disclosure of such information'' is changed to ''unauthorized disclosure of such analyses, procedures, scenarios, or other information.'' The phrase ''sabotage of such material'' at the end of the original proposed rule text is changed to ''sabotage of source, byproduct, or special nuclear material.''	This paragraph is revised in response to comments that the section was too broadly worded as proposed. The revision clarifies that the analyses, procedures, scenarios, and other information described in this section are considered SGI only if they reveal ''site-specific details'' about the physical protection of the facility or source, byproduct, or special nuclear material. The substitution of ''security-related'' for ''emergency planning'' is made to clarify that emergency preparedness plans should remain publicly available, unless a specific emergency preparedness procedure contains information which could potentially need to be protected as SGI.
73.23(a)(3)	The phrase ''relating to inspections and reports'' is changed to ''pertaining to safeguards and security inspections and reports.'' The words ''such as'' are changed to ''including,'' and the word ''otherwise'' is deleted.	This paragraph is revised to more precisely define its scope, simplify the revised proposed rule text, and to be consistent with § 73.22(a)(2).
73.23(a)(3)(ii)	The phrase ''after the investigation has been completed'' is changed to ''after corrective actions have been completed.''	This paragraph is changed to reflect that NRC would release general investigation reports after corrective action has been taken, unless the information is properly withheld under the Freedom of Information Act. Reports of investigation would not be released before corrective action is taken because the reports could be used to exploit security deficiencies.
73.23(a)(4)	The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling.'' The word ''defined'' is changed to ''set forth.''	The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements.
73.23(a)(5)	The phrase ''Other information'' is changed to ''Other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended.'' The phrase ''material or a facility'' at the end of the original proposed rule text is changed to ''source, byproduct, or special nuclear material or a facility.''	This paragraph is changed in response to comments that it was too broadly-worded as proposed. The change makes clear that the Commission retains the authority to issue further orders or regulations requiring the protection of categories of information not described in the regulations, provided the information still falls within the scope of Section 147 of the Atomic Energy Act of 1954, as amended.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.23(b)	This paragraph has been revised and reorganized in the revised proposed rule. The revised proposed rule adds the requirement that before an individual may be granted access to SGI–M the individual must undergo an FBI criminal history check. The FBI criminal history check is in addition to an established ''need to know'' and a background check for trustworthiness and reliability.	This paragraph has been revised in the revised proposed rule to implement Section 652 of the Energy Policy Act of 2005, to clarify the requirements for access to SGI–M, and to make the structure and language this section identical the structure and language of § 73.22(b). Note that pursuant to the Energy Policy Act of 2005, individuals to be granted access to SGI–M would be fingerprinted for purposes of an FBI criminal history check.
73.23(b)(1)	The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling.'' The phrase ''a determination of trustworthiness and reliability'' is changed to ''has undergone a Federal Bureau of Investigation criminal history check using the procedures set forth in § 73.57.'' Section 73.23(b)(1) now reads in its entirety: ''Except as the Commission may otherwise authorize, no person may have access to Safeguards Information designated as Safeguards Information—Modified Handling unless the person has an established ''need to know'' for the information and has undergone a Federal Bureau of Investigation criminal history check using the procedures set forth in § 73.57.''	The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information—Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements. The phrase ''and undergo a Federal Bureau of Investigation criminal history check to the extent required by 10 CFR 73.57 before such access'' has been added to this paragraph to implement Section 652 of the Energy Policy Act 2005, which amended Section 149 of the AEA. Under the revised proposed rule, an FBI criminal history check, an established ''need to know'', and a background check for trustworthiness and reliability would be required to access to SGI.
73.23(b)(2)	This section now reads: ''In addition, a person to be granted access to SGI must be trustworthy and reliable, based on a background check or other means approved by the Commission.''	This paragraph has been revised to clarify that individuals would subject to a background check before they may be granted access to SGI. The determination that an individual is trustworthy and reliable is based upon a background check, or other means approved by the Commission. The requirement of a background check for trustworthiness and reliability is in addition to the FBI criminal history check requirement. The term ''background check'' is defined in § 73.2. The requirement that individuals undergo a background check to determine their trustworthiness and reliability prior to access to SGI–M was in § 73.23(b)(1)(i) of the original proposed rule.
73.23(b)(3)	This section provides that § 73.59 lists the categories of individuals exempt from the criminal history and background check requirements of § 73.23(b)(1)&(2) by virtue of their occupational status.	This paragraph is revised to provide that § 73.59 lists the individuals who would be exempt from the FBI criminal history check requirement in § 73.23(b)(1) and the background check for trustworthiness and reliability requirement in § 73.23(b)(2) by virtue of their occupational status.
73.23(b)(4)	The following paragraph has been added: ''For persons participating in an NRC adjudicatory proceeding other than those specified in § 73.59, the 'need to know' determination shall be made by the originator of the Safeguards Information upon receipt of a request for access to the Safeguards Information. Where the information is in the possession of the originator and the NRC staff, whether in its original form or incorporated into another document by the recipient, the NRC staff shall make the determination. In the event of a dispute regarding the 'need to know' determination, the presiding officer of the proceeding shall determine whether the 'need to know' findings in § 73.2 can be made.''	This paragraph was added to clarify when the ''need to know'' determination would be made and who would determine whether a participant in an NRC adjudicatory proceeding has a ''need to know''.
73.23(b)(5)	This paragraph was § 73.23(b)(3) in the original proposed rule. The phrase ''except as set forth in paragraph (b)(1)'' has been deleted and replaced with ''except as set forth in this section.''	The change to this paragraph is the results from the restructuring of § 73.23(b).
73.23(c)(1)	The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modifed Handling.'' The phrase ''Safeguards Information within alarm stations, continuously manned guard posts or ready rooms need not be locked in a file drawer or cabinet'' is changed to ''Safeguards Information designated as Safeguards Information-Modifed Handling within alarm stations or rooms continuously occupied by authorized individuals need not be locked in a file drawer or cabinet.''	This paragraph is revised to make clear that SGI can be left outside of a locked security storage container if attended by individuals authorized access to SGI. The original proposed rule could have been interpreted to allow unauthorized persons access to SGI. The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.23(c)(2)	The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling.'' The word ''may'' is changed to ''shall.''	The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements. The word ''shall'' is replacing ''may'' because it is a requirement that locked file drawers or cabinets do not identify contents as SGI–M.
73.23(d)(1)	The phrase ''must be marked 'SGI-Modified Handling' '' is changed to ''must be marked to indicate the presence of Safeguards Information with modified handling requirements.'' The phrase ''to indicate the presence of protected information'' is deleted from the end of the first sentence. The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information—Modified Handling.''	This paragraph is revised in response to comments that the proposed document-marking language was too prescriptive. The changes are intended to allow more flexibility in document marking. The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements.
73.23(d)(1)(i)	The second appearance of the phrase ''safeguards information'' is deleted. The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information—Modified Handling.'' The word ''designation'' is changed to ''determination.''	The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements. The word ''designation'' was changed to ''determination'' to conform § 73.23(d)(1)(i) to §73.22(d)(1)(i). The second reference to safeguards information is removed because it was redundant.
73.23(d)(1)(iii)	The word ''would'' is changed to ''will''	The word ''would'' is changed to ''will.''
73.23(d)(2)	The phrase ''In addition to the 'SGI-Modified Handling' markings'' is changed to ''In addition to the markings.'' The phrase ''transmittal letter or memoranda'' is changed to ''any transmittal letters or memoranda to or from the NRC,'' ''e.g.'' is changed to ''i.e.,'' and ''must'' is changed to ''shall.'' The phrase ''Safeguards Information'' is changed to ''Safeguard Information designated as Safeguards Information—Modified Handling.'' The word ''document'' is added after ''transmittal.''	This paragraph is revised in response to comments that the proposed language was too prescriptive. The changes are intended to allow more flexibility in document marking. The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements. The word ''document'' was added to conform this paragraph to § 73.22(d)(2).
73.23(d)(3)	The phrase ''Portion marking of document or other information is required for correspondence to and from the NRC'' is changed to ''Portion marking is required only for correspondence to and from the NRC (i.e., cover letters, but not attachments) that contains Safeguards Information—Modified Handling.'' The last sentence of the original proposed rule text is deleted. The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information—Modified Handling.'' The word ''transmittal'' is added before ''document.''	This paragraph is revised in response to comments seeking clarification of which documents require portion marking. The intent of the revised section is to require portion marking only for cover letters and similar documents that transmit correspondence to or from the NRC. Attachments to the transmittal document do not need to be portion marked. This requirement would enable the NRC to better identify some of its security-related regulatory activities to the public because it will be administratively easier to redact and disclose portion-marked transmittal documents. The phrase ''Safeguards Information'' is changed to ''Safeguards Information—Modified Handling'' to better distinguish between these levels of Safeguards Information, which require different marking, storage, and handling requirements.
73.23(d)(4)	This paragraph did not appear in the original proposed rule and is added to parallel the requirement in § 73.22(d)(4). This paragraph did not appear in the original proposed rule and is added to parallel the requirement in § 73.22(d)(4).	This paragraph is added to parallel the requirement in § 73.22(d)(4) that documents be marked with some minimum level of consistency. Consistency in document marking is important to ensure ready and proper identification of SGI, as well as consistent handling.
73.23(e)	The phrase ''If Safeguards Information is reproduced on a digital copier that would retain Safeguards Information in its memory, then the copier may not be connected to a network'' is changed to ''Equipment used to reproduce Safeguards Information designated as Safeguards Information-Modified Handling must be evaluated to ensure that unauthorized individuals cannot access the information (e.g., unauthorized individuals cannot access SGI by gaining access to retained memory or network connectivity).'' The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	This paragraph is revised to provide more general instructions on reproduction of SGI. The original proposed paragraph limited the instructions to digital copiers. The revision applies a performance-based standard to any equipment used to reproduce SGI. The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements.
73.23(f)(1)	The phrase ''Safeguards Information'' and ''SGI—Modified Handling'' are changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of safeguards information, which would require different marking, storage, and handling requirements.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.23(f)(2)	The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.'' The words ''nationwide overnight'' are deleted.	The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements. The removal of the words ''nationwide overnight'' indicates that commercial delivery companies transporting SGI–M would not have to provide nationwide overnight service. SGI–M may be transported by trusted, local carriers, so long as the carrier has computer tracking capabilities.
73.23(f)(3)	The words ''or later'' are added after ''Federal Information Processing Standard [FIPS] 140–2.'' The phrase ''respond to a security event'' is changed to ''respond to a security contingency event.'' The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	The paragraph is reworded slightly for clarification. The phrase ''safeguards or security event'' is changed to ''security contingency event'' to emphasize that the requirement is security-related, and to maintain consistency with other regulatory provisions. The phrase ''or later'' is added to clarify that encryption technology that meets future Federal Information Processing Standards will be acceptable. The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirement.
73.23(g)(1)	The phrase ''Each file containing Safeguards Information'' is changed to ''Safeguards Information files.'' The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	The second sentence is edited to be more concise. The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements.
73.23(g)(2)	The phrase ''files shall be properly labeled as 'SGI-Modified Handling' '' is changed to ''files shall be properly labeled to indicate the presence of Safeguards Information with modified handling requirements.'' The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	This paragraph is revised in response to comments that the proposed language was too prescriptive. The changes are intended to allow more flexibility in document marking. The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements.
73.23(g)(3)	The word ''automated'' is deleted. The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	The word ''automated'' unnecessarily appeared in the original proposed rule and is deleted. The phrase ''Safeguards Information'' is changed to ''Safeguards Inforation-Modified Handling'' to better distinguish between these levels of safeguards information, which would require different marking, storage, and handling requirements.
73.23(h)	The word ''must'' in the last sentence is changed to ''shall.'' The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modified Handling.''	The word ''must'' is changed to ''shall'' to be consistent with § 73.22(h). The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of safeguards information, which require different marking, storage, and handling requirements.
73.23(i)	The phrase ''tearing into small pieces'' is deleted from the second sentence. The third sentence is changed from ''Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed'' to ''Piece sizes no wider than one quarter inch composed of several pages or documents and thoroughly mixed are considered completely destroyed.'' The phrase ''Safeguards Information'' is changed to ''Safeguards Information designated as Safeguards Information-Modifed Handling.''	This paragraph is revised to eliminate redundant language and to clarify that document destruction results in piece sizes no wider than one-quarter inch, thoroughly mixed. The phrase ''Safeguards Information'' is changed to ''Safeguards Information-Modified Handling'' to better distinguish between these levels of Safeguards Information, which require different marking, storage, and handling requirements.
73.37(f)(2)(iv)	This section is revised to read ''A statement that the information described below in § 73.37(f)(3) is required by NRC regulations to be protected in accordance with the requirements of §§ 73.21 and 73.22.''	This change conforms cross-references in part 73 with the revised proposed rule.
73.37(f)(3)(iii)	This section is revised to read ''For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until at least 10 days after the shipment has entered or originated within the State.''	This change conforms cross-references in part 73 with the revised proposed rule.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.37(f)(3)(iv)	This section is revised to read ''For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until 10 days after the last shipment in the series has entered or originated within the State and an estimate of the date on which the last shipment in the series will enter or originate within the State.''	This change conforms cross-references in part 73 with the revised proposed rule.
73.37(g)	This section is revised to read ''State officials, State employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in § 73.37(f)(3) shall protect that information against unauthorized disclosure as specified in §§ 73.21 and 73.22.''	This change conforms cross-references in part 73 with the revised proposed rule.
73.57	The revised proposed rule would revise the title of this section to read ''Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information.''	The title of this section would be changed to reflect application of the criminal history check requirement, including fingerprinting, to employees of entities engaged in an activity subject to regulation by the Commission and entities who have provided written notice to the Commission of intent to file an application for licensing, certification, permitting, or approval of a product subject to regulation by the Commission. This change implements the Energy Policy Act of 2005.
73.57(a)(1)	The revised proposed rule adds the phrase ''or to engage in an activity subject to regulation by the Commission'' to existing § 73.57(a)(1).	The original proposed rule has been revised to implement the Energy Policy Act of 2005's requirement that all individuals with access to Safeguards Information undergo an FBI criminal history check, including fingerprinting.
73.57(a)(2)	The revised proposed rule adds the phrase ''to engage in an activity subject to regulation by the Commission, as well as each entity who has provided written notice to the Commission of intent to file an application for licensing, certification, permitting, or approval of a product subject to regulation by the Commission'' to existing § 73.57(a)(2).	The original proposed rule has been revised to implement the Energy Policy Act of 2005's requirement that all individuals with access to Safeguards Information undergo an FBI criminal history check, including fingerprinting.
73.57(b)(2)(i)	The revised proposed rule deletes the phrase ''or for access to Safeguards Information.'' It adds a reference to § 73.23.	The phrase ''or access to Safeguards Information'' was deleted so that this paragraph would only address individuals exempt from § 73.57(b) for purposes of unescorted access to nuclear power facilities.
73.57(b)(2)(ii)	The revised proposed rule revises the list of individuals exempt from § 73.57(b)(1). The phrase ''Employees of other agencies of the United States Government'' is changed to ''An employee of the Commission or the Executive Branch of the United States Government.'' The phrase ''the Governor of a State or his or her designated employee representatives'' is changed to ''The Governor of a State or his or her designated State employee representative.'' The revised proposed rule adds ''Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC,'' ''Federal, State or local law enforcement personnel,'' ''State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives,'' and ''Any agent, contractor, or consultant of aforementioned persons who has undergone equivalent criminal history and background checks'' to the list of individuals exempt from § 73.57(b)(1). The revised proposed rule deletes ''individuals to whom disclosure is ordered pursuant to § 2.709(f)'' from the list.	The list of individuals exempt from the requirements of § 73.57(b) for purposes of access to SGI has been revised to be consistent with the list of individuals exempt from the criminal history and background check requirements for access to SGI in §§ 73.22(b)(3) and 73.23(b)(3). Consistent with the statement of considerations accompanying § 73.57 when it was first promulgated (52 FR 6310; (March 2, 1987)), the list of exempt individuals continues to be limited to individuals who have undergone the same or similar criminal history and background checks as a condition of employment or who have been certified by the NRC.

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
73.57(e)(3)	The following paragraph has been added: ''In addition to the right to obtain records from the FBI in paragraph (e)(1) of this section and the right to initiate challenge procedures inparagraph (e)(2) of this section, an individual participating in an NRC adjudication and seeking to obtain SGI for use in that adjudication may appeal a final adverse determination by the NRC Office of Administration to the Presiding Officer of the proceeding. Potential witnesses, participants without attorneys, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request that the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the Presiding Officer of the proceeding to review the adverse determination.''	This paragraph makes clear that an individual participating in an NRC adjudication and seeking access to SGI for use in the adjudication, may appeal to the presiding officer a final adverse determination by the NRC Office of Administration on the individual's trustworthiness and reliability.
73.59	The title of this section is changed to: ''Relief from fingerprinting, identification and criminal history records checks and background checks for designated categories of individuals.''	The changes in the title of this section is needed because of changes in the text to broaden its scope to include relief from the requirements for background checks. The recently promulgated § 73.59 did not relieve the specified categories of individuals from background checks because no requirement to perform background checks prior to granting access to SGI currently existed. Thus, no relief was needed. Relieving these categories of individuals from the fingerprinting requirements while at the same time subjecting them to background checks would not be consistent with the underlying premise that these categories of individuals are trustworthy and reliable by virtue of their occupational status.
	In addition, § 73.59(a) would be deleted in its entirety, including the definition of SGI. The remainder of the section is redesignated to comply with Office of the Federal Register requirements.	Section 73.59(a) is being deleted in its entirety because that definition of SGI is captured in 10 CFR § 73.2. Instead, a cross-reference to the definition of SGI (and SGI–M) in § 73.2 is made. including SGI–M within the scope of § 73.59 is necessary is necessary to be consistent with the structure of the rest of the proposed SGI rule, which refers to both SGI and SGI–M.
	Section 73.59(d) is new and adds as a category of individuals: ''The Comptroller General or an employee of the Government Accountability Office who has undergone fingerprinting for a prior U.S. Government criminal history check.''	Section 73.59(d) is added because the Commission has determined to grant relief under § 73.59 for the Comptroller General or an employee of the Government Accountability Office who has undergone fingerprinting for a prior U.S. Government criminal history check.
	Section 73.59(f) would be revised to refer to both Safeguards Information and Safeguards Information designated as Safeguards Information-Modified Handling (SGI–M).	This revision is necessary to reflect the change in terminology in the FRN clarifying that SGI–M is Safeguards Information.
	Section 73.59(k) is also new and would exempt ''Any agent, contractor, or consultant of the * * * persons who have undergone the equivalent criminal history and background checks to those required by 10 CFR §§ 73.22(b) or 73.23(b).''	New § 73.59(k) carries over into the new proposed rule the category of individuals described in former proposed §§ 73.22(b)(3)(vii) and 73.23(b)(3)(vii).
10 CFR part 73 Appendix I.	A new Appendix I is added that defines the quantities of concern described in the revised proposed rule.	In response to comments, the Commission has included a table of radionuclides and quantities that establishes the ''quantities of concern'' referenced in this revised proposed rule. The table is based on International Atomic Energy Agency recommendation in its Code of Conduct on the Safety and Security of Radioactive Sources, and has been used to determine the types and quantities of materials that warrant additional security requirements, some of which have already been issued by order. Other protective measures are under development based in part on the threshold quantities established in this table.
	Radium-226 is being added to the listing of radionuclides	Section 651(e) of the Energy Policy Act of 2005 amended Section 11e. of the Atomic Energy Act of 1954 to include in the definition of byproduct material ''any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity.''

TABLE 1.—CHANGES TO THE ORIGINAL PROPOSED RULE TEXT AND EXPLANATION OF CHANGES—Continued

[Additional details regarding the changes may be found in the responses to comments.]

10 CFR section	Changes from the original proposed rule text	Explanation of changes
76.113(c)	The phrase "and parts 25 and 95 of this chapter" is added to the end of the first sentence. The second sentence reads: "Information designated by the U.S. Department of Energy (DOE) as Unclassified Controlled Nuclear Information must be protected in accordance with DOE requirements.	In response to public comment, this paragraph has been revised. As revised, Unclassified Controlled Nuclear Information would be protected in accordance with DOE requirements.
150.15(a)(9)	A cross-reference to § 73.22 and the phrase "as applicable" are added.	A cross-reference to § 73.22 and the words "as applicable" are added for completeness.

D. Request for Specific Comment

A background check, which would contain as an element, a criminal history check (including fingerprinting), is necessary for access to SGI, in all circumstances, unless specifically exempt in accordance with the concepts in § 73.22(b)(3) and § 73.23(b)(3). Those provisions contain cross-reference to § 73.59, which describes categories of individuals who are exempt from the criminal history check and background check requirements by virtue of their occupational status. These exemptions are authorized by section 149(a)(4)(B) of the AEA, under which the Commission may, by rule, exempt or relieve individuals from the fingerprinting, identification, and criminal history check requirements. The exercise of such authority pursuant to section 149(a)(4)(B) requires a finding by the Commission that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.'' In the final rule promulgating § 73.59, the Commission made the required finding. The Commission is specifically seeking comment on the appropriateness of these revised provisions, as they apply to various categories of individuals.

V. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, and 150 under one or more of Sections 147, 161b., 161i., or 161o. of the AEA. Willful violations of the revised proposed rule would be subject to criminal enforcement.

VI. Agreement State Issues

The rule proposes changes to parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, and 150 would be considered to be Category NRC compatibility and therefore are areas of exclusive NRC authority. Nonetheless, the original proposed rule was provided to the Agreement States for their review and comment prior to its publication of draft rule text on the NRC Web site and the publication of the rule in the **Federal Register**. Agreement States had an opportunity to review the revised proposed rule prior to publication.

The Agreement States of Illinois and Washington commented on the original proposed rule prior to publication in the **Federal Register**. Both states expressed concern about the breadth of rule text reflecting the Commission's authority to prohibit the unauthorized disclosure of SGI relating to such quantities of special nuclear material, source, and byproduct material as the Commission determines to be significant to the public health and safety or the common defense and security. In response to this concern, the Commission notes that it needs such broad authority to adequately protect SGI, and Section 147 of the AEA provides such authority to the Commission. The Commission has, however, modified certain aspects of the revised proposed rule, e.g. the definition of SGI, to more closely track the language in Section 147 of the AEA.

An agency of the State of New York commented on the original proposed rule and asserted that the Commission lacks the statutory authority to impose regulations for the protection of SGI pertaining to Agreement State licensees. According to these comments, the term ''licensee's or ''applicant's'' [detailed information] in Section 147 cannot be construed as inclusive of State licensees or applicants. As explained previously in response to specific comments, the Commission does not agree with this commenter's interpretation of Section 147.

VII. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this revised proposed rule, the NRC is using the following Government-unique standard: National Institute of Standards and Technology, Federal Information Processing Standard [FIPS] PUB–140–2, ''Security Requirements for Cryptographic Modules,'' May 25, 2001. The NRC has determined that using this Government-unique standard is justified because no voluntary consensus standard has been identified that could be used instead. In addition, this Government-unique standard was developed using the same procedures used to create a voluntary consensus standard.

VIII. Finding of No Significant Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this revised proposed rule, if adopted, would not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is that the revised proposed rule relates to the designation, handling and protection of SGI and the collection of information on which a determination to grant individuals access to this information is based. The determination of this environmental assessment is that there would be no significant environmental impacts from this action.

The NRC has sent a copy of the environmental assessment and the revised proposed rule to every State Liaison Officer and requested comments on the environmental assessment. No State provided comments on the draft environmental assessment.

IX. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the

Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 73, ''Protection of Safeguards Information.''

The form number if applicable: Not applicable.

How often the collection is required: On occasion. Any person (including an individual) or entity who is permitted access to SGI or Safeguards Information designated for modified handling (SGI–M) must undergo a background check, including fingerprinting, to establish trustworthiness and reliability. That determination is valid for a 5-year period. Licensees must mark and protect SGI or SGI–M information from unauthorized disclosure on a continuous basis.

Who will be required or asked to report: Persons (including individuals) or entities who are licensed, certified, or permitted to engage in an activity subject to regulation by the Commission, including utilization facilities; vendors; individuals who have filed an application for a license or certificate to engage in Commission-regulated activities; and individuals who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission.

An estimate of the number of annual responses: 485.

The estimated number of annual respondents: 485.

An estimate of the total number of hours needed annually to complete the requirement or request: 4,741 (9.78 hours per recordkeeper).

Abstract: The NRC is proposing to amend its regulations for the protection of Safeguards Information (SGI) and add requirements for Safeguards Information for modified handling (SGI–M) to protect SGI and SGI–M from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The proposed amendments would affect certain licensees, information, and materials not currently subject to SGI regulations, but which are within the scope of Commission authority under the Atomic Energy Act of 1954, as amended (AEA). The NRC originally published the proposed rule in the **Federal Register** on February 11, 2005 (70 FR 7196). The NRC is again publishing the proposed rule on SGI in order to allow the public to comment on changes to the rule text. These changes are in response to public comments and amendments to the AEA in the Energy Policy Act of 2005 (EPAct) and Commission Orders issued to licensees authorized to possess and transfer items containing certain quantities of radioactive material.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the RuleForum site, *http://ruleforum.llnl.gov.*

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by November 30, 2006 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0002), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *John_A._Asalone@omb.eop.gov* or comment by telephone at (202) 395–4650.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared a revised regulatory analysis on this revised proposed rule. The revised analysis examines the costs and benefits of the alternatives considered by the Commission. The revised regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. The revised regulatory analysis is also available electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.* Single copies of the revised analysis may be obtained from the Office of the General Counsel, U.S. Nuclear Regulatory Commission, at 301–415–1633 or by e-mail at *mur@nrc.gov.*

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC has determined that this rule, if adopted, would not have a significant economic impact upon a substantial number of small entities. The NRC estimates that the proposed regulation will affect approximately 152 NRC licensees, 87 Agreement State licensees, 200 State contacts, and 29 applicants for licenses. The NRC estimates that small businesses as defined by 10 CFR 2.810 comprise less than 1 percent of the total number of NRC licensees and state contacts affected by this regulation. The NRC does not have information on the small business status of the Agreement State licensees or applicants for NRC and Agreement State licenses affected by this regulation, therefore, in its February 11, 2005 original proposed rule and the regulatory analysis developed in support of the original proposed rule, the NRC requested public comments on the impact of the original proposed rule on small businesses. No comments were received. In the absence of information on the small business status of the Agreement State licensees and applicants for NRC and Agreement State licenses affected by this regulation and based on the small proportion of NRC licensees that qualify as small entities, the NRC estimates that the number of small entities among these licensees is also less than 1 percent. For a small entity, the implementation burden imposed by the regulation is estimated to be 41.8 hours, and the annual burden is estimated to be 3.5 hours.

The potential benefits of preventing disclosure of SGI by unauthorized persons would significantly outweigh the economic impact on small licensees.

XII. Backfit Analysis

The Commission has concluded, on the basis of the documented evaluation in the revised regulatory analysis, that the majority of the requirements in the revised proposed rule would not be backfits as defined in 10 CFR 50.109(a)(4)(ii), 70.76(a)(4)(iii), 72.62, and 76.76(a)(4)(ii). The Commission has also concluded that the requirements in the rule that would constitute backfits are necessary to ensure insure that the facilities and materials described in the rule provide adequate protection to the public health and safety and are in accord with the common defense and security, as applicable. Therefore, a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3), 70.76, 72.62, and 76.76, do not apply. The documented evaluation in the revised regulatory analysis includes a statement of the objectives of and the reasons for the backfits that would be required by the revised proposed rule and sets forth the Commission's conclusion that these backfits are not subject to the cost-benefit standards of 10 CFR 50.109(a)(3), 70.76, 72.62, and 76.76.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and record keeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76 and 150.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 is revised to read as follows:

Authority: Secs.149, 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231, 2169); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42

U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.4, a new definition for *Safeguards Information* is added in alphabetical order to read as follows:

§ 2.4 Definitions.

* * * * *

Safeguards Information means information not classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed control and accounting procedures for the physical protection of special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; detailed security measures (including security plans, procedures, and equipment) for the physical protection of source, byproduct, or special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities; and any other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, the unauthorized disclosure of which, as determined by the Commission through order or regulation, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of sabotage or theft or diversion of source, byproduct, or special nuclear material.

* * * * *

3. In § 2.336, paragraph (f) is redesignated as (g), and a new paragraph (f) is added to read as follows:

§ 2.336 General discovery.

* * * * *

(f)(1) In the event of a dispute over disclosure of documents and records including Safeguards Information referred to in Sections 147 and 181 of the Atomic Energy Act, as amended, the presiding officer may issue an order requiring disclosure if—

(i) The presiding officer finds that the individual seeking access to Safeguards Information to participate in an NRC adjudication has the requisite ''need to know'', as defined in § 73.2;

(ii) The individual has undergone an FBI criminal history check, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable, by submitting fingerprints to the NRC Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, and otherwise following the procedures in § 73.57(d) for submitting and processing of fingerprints. However, before an adverse determination by the NRC Office of Administration on an individual's criminal history check, the individual shall be afforded the protections provided by § 73.57; and

(iii) The NRC Office of Administration has found, based upon a background check, that the individual is trustworthy and reliable, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable. However, before an adverse determination on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections provided by § 73.57.

(iv) Participants, potential witnesses, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. The request may also seek to have the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the person against whom the adverse determination has been made. Within 10 days of receipt of the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.

(2) The presiding officer may include in an order any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel.

(3) When Safeguards Information protected from unauthorized disclosure under Section 147 of the Atomic Energy Act, as amended, is received and possessed by a participant other than the NRC staff, it must also be protected according to the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

(4) The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.

(5) In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205.

(6) For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issued under Section 161b. of the Atomic Energy Act.

* * * * *

4. In § 2.705, paragraph (c)(2) is revised and new paragraphs (c)(3) through (7) are added to read as follows:

§ 2.705 Discovery-additional methods.

* * * * *

(c) * * *

(2) In the case of documents and records including Safeguards Information referred to in Sections 147 and 181 of the Atomic Energy Act, as amended, the presiding officer may issue an order requiring disclosure if—

(i) The presiding officer finds that the individual seeking access to Safeguards Information in order to participate in an NRC proceeding has the requisite ''need to know'', as defined in § 73.2;

(ii) The individual has undergone an FBI criminal history check, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable by submitting fingerprints to the NRC Office of Administration, Security Processing

Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, and otherwise following the procedures in § 73.57(d) for submitting and processing fingerprints. However, before an adverse determination on an individual's criminal history check by the NRC Office of Administration, the individual shall be afforded the protections of § 73.57; and

(iii) The NRC Office of Administration has found, based upon a background check, that the individual is trustworthy and reliable, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3). However, before an adverse determination on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections of § 73.57.

(iv) Participants, potential witnesses, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. The request may also seek to have the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the person against whom the adverse determination has been made. Within 10 days of receipt of the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.

(3) The presiding officer may include in an order any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel.

(4) When Safeguards Information protected from unauthorized disclosure under Section 147 of the Atomic Energy Act, as amended, is received and possessed by a participant other than the NRC staff, it must also be protected according to the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

(5) The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.

(6) In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205.

(7) For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issued under Section 161b. of the Atomic Energy Act.

* * * * *

5. In § 2.709, paragraph (f) is revised to read as follows:

§ 2.709 Discovery against NRC staff.

* * * * *

(f) (1) In the case of requested documents and records (including Safeguards Information referred to in Sections 147 and 181 of the Atomic Energy Act, as amended) exempt from disclosure under § 2.390, the presiding officer may issue an order requiring disclosure to the Executive Director for Operations or a delegate of the Executive Director for Operations, to produce the document or records (or any other order issued ordering production of the document or records) if—

(i) The presiding officer finds that the individual seeking access to Safeguards Information to participate in an NRC adjudication has the requisite ''need to know'', as defined in § 73.2;

(ii) The individual has undergone an FBI criminal history check, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), by submitting fingerprints to the NRC Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, and otherwise following the procedures in § 73.57(d) for submitting and processing fingerprints. However, before an adverse determination by the NRC Office of Administration on an individual's criminal history check, the individual shall be afforded the protections of § 73.57; and

(iii) The NRC Office of Administration finds, based on a background check, that the individual is trustworthy and reliable, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable. However, before an adverse determination by the NRC Office of Administration on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections of § 73.57.

(iv) Participants, potential witnesses, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. The request may also seek to have the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the person against whom the adverse determination has been made. Within 10 days of receipt of the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.

(2) The presiding office may include in an order any protective terms and

conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel.

(3) When Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act, as amended, is received and possessed by a participant other than the NRC staff, it must also be protected according to the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

(4) The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.

(5) In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205.

(6) For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issued under Section 161b. of the Atomic Energy Act.

* * * * *

6. In § 2.1003, paragraph (a)(4)(iii) is revised to read as follows:

§ 2.1003 Availability of material.

(a) * * *

(4) * * *

(iii) Which constitutes Safeguards Information under § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

* * * * *

7. In § 2.1010, paragraph (b)(6) is revised to read as follows:

§ 2.1010 Pre-License application presiding officer.

* * * * *

(b) * * *

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential parties, interested governmental participants, and parties in the proceeding, or to their qualified witnesses and counsel.

(i) The Pre-License Application Presiding Officer may issue an order requiring disclosure of Safeguards Information if—

(A) The Pre-License Application Presiding Officer finds that the individual seeking access to Safeguards Information in order to participate in an NRC adjudication has the requisite ''need to know'', as defined in § 73.2;

(B) The individual has undergone an FBI criminal history check, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable by submitting fingerprints to the NRC Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, and otherwise following the procedures in § 73.57(d) for submitting and processing fingerprints. However, before an adverse determination by the NRC Office of Administration on an individual's criminal history, the individual shall be afforded the protections of § 73.57; and

(C) A finding by the NRC Office of Administration, based on a background check, that the individual is trustworthy and reliable, unless exempt under §§ 73.22(b)(3) or 73.23(b)(3), as applicable. However, before an adverse determination by the NRC Office of Administration on an individual's background check for trustworthiness and reliability, the individual shall be afforded the protections on § 73.57.

(D) Participants, potential witnesses, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request the presiding officer to review the adverse determination. The request may also seek to have the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination. For purposes of review, the adverse determination must be in writing and set forth the grounds for the determination. The request for review shall be served on the NRC staff and may include additional information for review by the presiding officer. The request must be filed within 15 days after receipt of the adverse determination by the person against whom the adverse determination has been made. Within 10 days of receipt of the request for review and any additional information, the NRC staff will file a response indicating whether the request and additional information has caused the NRC Office of Administration to reverse its adverse determination. The presiding officer may reverse the Office of Administration's final adverse determination only if the officer finds, based on all the information submitted, that the adverse determination constitutes an abuse of discretion. The presiding officer's decision must be rendered within 15 days after receipt of the staff filing indicating that the request for review and additional information has not changed the NRC Office of Administration's adverse determination.

(ii) The Pre-License Application Presiding Officer may include in an order any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested states and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel.

(iii) When Safeguards Information, protected from disclosure under Section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested government participant, or party, other than the NRC staff, it shall also be protected according to the requirements of § 73.21 and the requirements of §§ 73.22 or 73.23 of this chapter, as applicable.

(iv) The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.

(v) In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under Section 147 of the Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to § 2.205.

(vi) For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under Section 161b. of the Atomic Energy Act of 1954, as amended.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

8. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005). Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

9. In § 30.32, paragraph (j) is added to read as follows:

§ 30.32 Application for specific licenses.

* * * * *

(j) Each applicant for a license for byproduct material subject to the requirements of part 73 of this chapter shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.23 of this chapter, as applicable.

10. In § 30.34, paragraph (j) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(j) Each licensee subject to the requirements of part 73 of this chapter shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.23 of this chapter, as applicable.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

11. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–59, 119 Stat. 594 (2005). Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

12. In § 40.31, paragraph (m) is added to read as follows:

§ 40.31 Application for specific licenses.

* * * * *

(m) Each applicant for a license for the possession of source material at a facility for the production of uranium hexafluoride shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable. Each applicant for a license for source material subject to the requirements of part 73 of this chapter shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

13. In § 40.41, paragraph (h) is added to read as follows:

§ 40.41 Terms and conditions of licenses.

* * * * *

(h) Each licensee subject to the requirements of part 73 of this chapter shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

14. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

15. In § 50.34, paragraph (e) is revised to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(e) Each applicant for a license to operate a production or utilization facility shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable.

* * * * *

16. In § 50.54, paragraph (v) is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(v) Each licensee subject to the requirements of part 73 of this chapter shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable.

* * * * *

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

17. The authority citation for part 52 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

18. In § 52.17, paragraph (d) is added to read as follows:

§ 52.17 Contents of applications.

* * * * *

(d) Each applicant for an early site permit under this part shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

19. In § 52.47, paragraph (c) is added to read as follows:

§ 52.47 Contents of applications.

* * * * *

(c) Each applicant for a standard design certification under this part shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

20. In § 52.79, paragraph (e) is added to read as follows:

§ 52.79 Contents of application; technical information.

* * * * *

(e) Each applicant for a combined license under this subpart shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

21. The authority citation for part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

22. In § 60.21, paragraph (d) is added to read as follows:

§ 60.21 Content of application.

* * * * *

(d) The applicant for a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982 shall protect Safeguards Information in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable, and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.

23. In § 60.42, paragraph (d) is added to read as follows:

§ 60.42 Conditions of license.

* * * * *

(d) The licensee shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable. The licensee shall ensure that classified information is protected in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

24. The authority citation for part 63 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

25. In § 63.21, paragraph (d) is added to read as follows:

§ 63.21 Content of application.

* * * * *

(d) The applicant for a license to receive and possess source, special nuclear, and byproduct material at a geologic repository at Yucca Mountain, Nevada, shall protect Safeguards Information in accordance with the requirements in § 73.21, and the requirements in § 73.22, or § 73.23 of this chapter, as applicable, and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.

26. In § 63.42, paragraph (e) is added to read as follows:

§ 63.42 Conditions of license.

* * * * *

(e) The licensee shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in § 73.21, and the requirements in § 73.22, or § 73.23 of this chapter, as applicable, and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

27. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

28. In § 70.22, paragraph (l) is revised to read as follows:

§ 70.22 Contents of applications.

* * * * *

(l) Each applicant for a license shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22, or 73.23 of this chapter, as applicable, and shall protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable.

* * * * *

29. In § 70.32, paragraph (j) is revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(j) Each licensee who possesses special nuclear material, or who transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material, special nuclear material of moderate strategic significance, or special nuclear material of low strategic significance, or more than 100 grams of irradiated reactor fuel shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable, and shall protect classified information in accordance

with the requirements of parts 25 and 95 of this chapter, as applicable.

* * * * *

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

30. The authority citation for part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

31. Section 71.11 is added to read as follows:

§ 71.11 Protection of Safeguards Information.

Each licensee, certificate holder, or applicant for a Certificate of Compliance for a transportation package for transport of irradiated reactor fuel, strategic special nuclear material, a critical mass of special nuclear material, or byproduct material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security, shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

32. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

33. In § 72.22, paragraph (f) is added to read as follows:

§ 72.22 Contents of application: General and financial information.

* * * * *

(f) Each applicant for a license under this part to receive, transfer, and possess power reactor spent fuel, power reactor-related Greater than Class C (GTCC) waste, and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23, as applicable.

34. In § 72.44, paragraph (h) is added to read as follows:

§ 72.44 License conditions.

* * * * *

(h) Each licensee subject to the requirements of part 73 of this chapter shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23, as applicable.

35. In § 72.212, paragraph (b)(5)(v) is redesignated as (b)(5)(vi) and a new paragraph (b)(5)(v) is added to read as follows:

§ 72.212 Conditions of general license issued under § 72.210.

* * * * *

(b) * * *

(5) * * *

(v) Each general licensee that receives and possesses power reactor spent fuel and other radioactive materials associated with spent fuel storage shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

* * * * *

36. In § 72.236, paragraph (n) is added to read as follows:

§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.

* * * * *

(n) Safeguards Information shall be protected against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

37. The authority citation for part 73 is revised to read as follows:

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

38. In § 73.1, paragraph (b)(7) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(7) This part prescribes requirements for the protection of Safeguards Information (including the designation or marking: Safeguards Information—Modified Handling) in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires that information.

* * * * *

39. In § 73.2, new definitions Background Check, Individual Authorized Access to Safeguards Information, Individual Authorized Access to Safeguards Information—Modified Handling, Quantities of Concern, Safeguards Information—Modified Handling, and Trustworthiness and Reliability, are added in alphabetical order and the definitions of Safeguards Information and ''Need to Know'' are revised to read as follows:

§ 73.2 Definitions.

* * * * *

Background check includes, at a minimum, a criminal history check, verification of identity, employment history, education, and personal references. Individuals engaged in activities subject to regulation by the

Commission, applicants for licenses to engage in Commission-regulated activities, and individuals who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission are required under § 73.57 to conduct criminal history checks before granting access to Safeguards Information. A background check must be sufficient to support the trustworthiness and reliability determination so that the person performing the check and the Commission have assurance that granting individuals access to Safeguards Information does not constitute an unreasonable risk to the public health and safety or the common defense and security.

* * * * *

Individual Authorized Access to Safeguards Information is an individual authorized to have access to and handle such information pursuant to the requirements of §§ 73.21 and 73.22.

Individual Authorized Access to Safeguards Information—Modified Handling is an individual authorized to have access to and handle such information pursuant to the requirements of §§ 73.21 and 73.23 of this chapter.

* * * * *

''Need to Know'' means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, licensee, applicant, or certificate holder employment. In an adjudication, ''need to know'' means a determination by the originator of the information that the information is necessary to enable the proposed recipient to proffer and/or adjudicate a specific contention in that proceeding, and the proposed recipient of the specific Safeguards Information possesses demonstrable knowledge, skill, training, or education to effectively utilize the specific Safeguards Information in the proceeding. Where the information is in the possession of the originator and the NRC staff (dual possession), whether in its original form or incorporated into another document by the recipient, the NRC staff makes the determination. In the event of a dispute regarding the ''need to know'' determination, the presiding officer of the proceeding shall make the ''need to know'' determination.

* * * * *

Quantities of Concern means the quantities of the radionuclides meeting or exceeding the threshold limits set forth in Table I–1 of Appendix I of this part.

* * * * *

Safeguards Information means information not classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed control and accounting procedures for the physical protection of special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; detailed security measures (including security plans, procedures, and equipment) for the physical protection of source, byproduct, or special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; security measures for the physical protection of and location of certain plant equipment vital to the safety of production or utilization facilities; and any other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, the unauthorized disclosure of which, as determined by the Commission through order or regulation, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of sabotage or theft or diversion of source, byproduct, or special nuclear material.

Safeguards Information—Modified Handling is the designation or marking applied to Safeguards Information which the Commission has determined requires handling requirements modified from the specific Safeguards Information handling requirements.

* * * * *

Trustworthiness and reliability are characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of Safeguards Information to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security. A determination of trustworthiness and reliability is based upon a background check.

* * * * *

40. Section 73.8(b) is revised to read as follows:

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.21, 73.22, 73.23, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.56, 73.57, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and appendices B, C, and G.

41. Section 73.21 is revised to read as follows:

§ 73.21 Protection of Safeguards Information: Performance Requirements.

(a) *General performance requirement.* (1) Each licensee, applicant, or other person who produces, receives, or acquires Safeguards Information shall ensure that it is protected against unauthorized disclosure. To meet this general performance requirement, such licensees, applicants, or other persons subject to this section shall:

(i) Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in § 73.22 related to: Power reactors; a formula quantity of strategic special nuclear material; transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel; uranium hexafluoride production facilities; fuel fabrication facilities; uranium enrichment facilities; independent spent fuel storage installations; and geologic repository operations areas.

(ii) Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in § 73.23 related to: Panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source, byproduct, or special nuclear material in greater than or equal to Category 2 quantities of concern; research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance; and transportation of greater than or equal to Category 2 quantities of concern.

(2) Information protection procedures employed by Federal, State, and local law enforcement agencies are presumed to meet the general performance requirement in § 73.21(a)(1).

(b) *Commission Authority.* (1) Pursuant to Section 147 of the Atomic Energy Act of 1954, as amended, the

Commission may impose, by order or regulation, Safeguards Information protection requirements different from or in addition to those specified in this part on any person who produces, receives, or acquires Safeguards Information.

(2) The Commission may require, by regulation or order, that information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, related to facilities or materials not specifically described in §§ 73.21, 73.22 or 73.23 be protected under this part.

42. Section 73.22 is added to read as follows:

§ 73.22 Protection of Safeguards Information: Specific Requirements.

This section contains specific requirements for the protection of Safeguards Information related to power reactors; a formula quantity of strategic special nuclear material; transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel; uranium hexafluoride production facilities, fuel fabrication facilities, and uranium enrichment facilities; independent spent fuel storage installations; and geologic repository operations areas.

(a) *Information to be protected.* The types of information and documents that must be protected as Safeguards Information include non-public security-related requirements such as:

(1) Physical Protection. Information not classified as Restricted Data or National Security Information related to physical protection, including:

(i) The composite physical security plan for the facility or site;

(ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical security system not easily discernible by members of the public;

(iii) Alarm system layouts showing the location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources for security equipment, and duress alarms not easily discernible by members of the public;

(iv) Physical security orders and procedures issued by the licensee for members of the security organization detailing duress codes, patrol routes and schedules, or responses to security contingency events;

(v) Site-specific design features of plant security communications systems;

(vi) Lock combinations, mechanical key design, or passwords integral to the physical security system;

(vii) Documents and other matter that contain lists or locations of certain safety-related equipment explicitly identified in the documents as vital for purposes of physical protection, as contained in security plans, contingency measures, or plant specific safeguards analyses;

(viii) The composite safeguards contingency plan/measures for the facility or site;

(ix) The composite facility guard qualification and training plan/measures disclosing features of the physical security system or response procedures;

(x) Information relating to on-site or off-site response forces, including size, armament of response forces, and arrival times of such forces committed to respond to security contingency events;

(xi) The Adversary Characteristics Document or other implementing guidance associated with the Design Basis Threat in § 73.1; and

(xii) Engineering and safety analyses, security-related procedures or scenarios, and other information revealing site-specific details of the facility or materials if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(2) *Physical protection in transit.* Information not classified as Restricted Data or National Security Information related to the transportation of, or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, including:

(i) The composite physical security plan for transportation;

(ii) Schedules and itineraries for specific shipments of source material, byproduct material, high-level nuclear waste, or irradiated reactor fuel. Schedules for shipments of source material, byproduct material, high-level nuclear waste, or irradiated reactor fuel are no longer controlled as Safeguards Information 10 days after the last shipment of a current series;

(iii) Vehicle immobilization features, intrusion alarm devices, and communications systems;

(iv) Arrangements with and capabilities of local police response forces, and locations of safe havens;

(v) Limitations of communications during transport;

(vi) Procedures for response to security contingency events;

(vii) Information concerning the tactics and capabilities required to defend against attempted sabotage, or theft and diversion of formula quantities of special nuclear material, irradiated reactor fuel, or related information; and

(viii) Engineering or safety analyses, security-related procedures or scenarios and other information related to the protection of the transported material if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(3) *Inspections, audits and evaluations.* Information not classified as National Security Information or Restricted Data pertaining to safeguards and security inspections and reports, including:

(i) Portions of inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system. Disclosure of corrected defects, weaknesses, or vulnerabilities is subject to an assessment taking into account such factors as trending analyses and the impacts of disclosure on licensees having similar physical security systems; and

(ii) Reports of investigations containing general information may be released after corrective actions have been completed, unless withheld pursuant to other authorities, e.g., the Freedom of Information Act (5 U.S.C. 552).

(4) *Correspondence.* Portions of correspondence insofar as they contain Safeguards Information as set forth in paragraphs (a)(1) through (a)(3) of this section.

(5) Other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, that the Commission determines by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material or a facility.

(b) *Conditions for access.*

(1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established ''need to know'' for the information and has undergone a Federal Bureau of

Investigation criminal history check using the procedures set forth in § 73.57.

(2) In addition, a person to be granted access to SGI must be trustworthy and reliable, based on a background check or other means approved by the Commission.

(3) The categories of individuals specified in 10 CFR 73.59 are exempt from the criminal history and background check requirements in paragraphs (b)(1) and (b)(2) of this section by virtue of their occupational status:

(4) For persons participating in an NRC adjudicatory proceeding other than those specified in § 73.59, the ''need to know'' determination shall be made by the originator of the Safeguards Information upon receipt of a request for access to the Safeguards Information. Where the information is in the possession of the originator and the NRC staff, whether in its original form or incorporated into another document by the recipient, the NRC staff shall make the determination. In the event of a dispute regarding the ''need to know'' determination, the presiding officer of the proceeding shall determine whether the ''need to know'' findings in § 73.2 can be made.

(5) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in this section.

(c) *Protection while in use or storage.*

(1) While in use, matter containing Safeguards Information must be under the control of an individual authorized access to Safeguards Information. This requirement is satisfied if the Safeguards Information is attended by such an individual even though the information is in fact not constantly being used. Safeguards Information within alarm stations, or rooms continuously occupied by authorized individuals need not be stored in a locked security storage container.

(2) While unattended, Safeguards Information must be stored in a locked security storage container. The container shall not identify the contents of the matter contained and must preclude access by individuals not authorized access in accordance with the provisions of this section. Knowledge of lock combinations protecting Safeguards Information must be limited to a minimum number of personnel for operating purposes who have a ''need to know'' and are otherwise authorized access to Safeguards Information in accordance with the provisions of this part. Access to lock combinations must be strictly controlled so as to prevent disclosure to an individual not authorized access to Safeguards Information.

(d) *Preparation and marking of documents or other matter.*

(1) Each document or other matter that contains Safeguards Information as described in § 73.21(a)(1)(i) and this section must be marked to indicate the presence of such information in a conspicuous manner on the top and bottom of each page. The first page of the document must also contain:

(i) The name, title, and organization of the individual authorized to make a Safeguards Information determination, and who has determined that the document contains Safeguards Information;

(ii) The date the determination was made; and

(iii) An indication that unauthorized disclosure will be subject to civil and criminal sanctions.

(2) In addition to the markings at the top and bottom of each page, any transmittal letters or memoranda to or from the NRC which do not in themselves contain Safeguards Information shall be marked to indicate that attachments or enclosures contain Safeguards Information but that the transmittal document does not (i.e., ''When separated from Safeguards Information enclosure(s), this document is decontrolled'').

(3) Any transmittal document forwarding Safeguards Information must alert the recipient that protected information is enclosed. Certification that a document or other media contains Safeguards Information must include the name and title of the certifying official and date designated. Portion marking is required only for correspondence to and from the NRC (i.e., cover letters, but not attachments) that contains Safeguards Information. The portion marking must be sufficient to allow the recipient to identify and distinguish those sections of the transmittal document or other information containing the Safeguards Information from non-Safeguards Information.

(4) Marking of documents containing or transmitting Safeguards Information shall, at a minimum include the words ''Safeguards Information'' to ensure identification of protected information for the protection of facilities and material covered by § 73.22.

(e) *Reproduction of matter containing Safeguards Information.* Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Equipment used to reproduce Safeguards Information must be evaluated to ensure that unauthorized individuals cannot access Safeguards Information (e.g., unauthorized individuals cannot access SGI by gaining access to retained memory or network connectivity).

(f) *External transmission of documents and material.*

(1) Documents or other matter containing Safeguards Information, when transmitted outside an authorized place of use or storage, must be packaged in two sealed envelopes or wrappers to preclude disclosure of the presence of protected information. The inner envelope or wrapper must contain the name and address of the intended recipient and be marked on both sides, top and bottom, with the words ''Safeguards Information.'' The outer envelope or wrapper must be opaque, addressed to the intended recipient, must contain the address of the sender, and may not bear any markings or indication that the document contains Safeguards Information.

(2) Safeguards Information may be transported by any commercial delivery company that provides service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

(3) Except under emergency or extraordinary conditions, Safeguards Information shall be transmitted outside an authorized place of use or storage only by (a) NRC approved secure electronic devices, such as facsimiles or telephone devices, provided that transmitters and receivers implement processes that will provide high assurance that Safeguards Information is protected before and after the transmission or (b) electronic mail through the internet, provided that (i) the information is encrypted by the NRC-approved encryption modules and algorithms; (ii) the information is produced by a self contained secure automatic data process system; and (iii) transmitters and receivers implement the information handling processes that will provide high assurance that Safeguards Information is protected before and after transmission. Physical security events required to be reported pursuant to § 73.71 are considered to be extraordinary conditions.

(g) *Processing of Safeguards Information on electronic systems.*

(1) Safeguards Information may be stored, processed or produced on a stand-alone computer (or computer system) for processing of Safeguards Information. ''Stand-alone'' means a computer or computer system to which access is limited to individuals authorized access to Safeguards Information. A stand-alone computer or

computer system shall not be physically or in any other way connected to a network accessible by users who are not authorized access to Safeguards Information.

(2) Each computer not located within an approved and lockable security storage container that is used to process Safeguards Information must have a removable storage medium with a bootable operating system. The bootable operating system must be used to load and initialize the computer. The removable storage medium must also contain the software application programs, and all data must be processed and saved on the same removable storage medium. The removable storage medium must be secured in a locked security storage container when not in use.

(3) A mobile device (such as a laptop computer) may also be used for the processing of Safeguards Information provided the device is secured in a locked security storage container when not in use. Other systems may be used if approved for security by the appropriate NRC office.

(h) *Removal from Safeguards Information category*. Documents originally containing Safeguards Information must be removed from the Safeguards Information category at such time as the information no longer meets the criteria contained in this part. A review of such documents to make that determination shall be conducted every 10 years. Documents that are 10 years or older and designated as SGI or SGI–M shall be reviewed for a decontrol determination if they are currently in use or removed from storage. Care must be exercised to ensure that any document decontrolled not disclose Safeguards Information in some other form or be combined with other unprotected information to disclose Safeguards Information. The authority to determine that a document may be decontrolled shall be exercised only by the NRC or with NRC approval, or if possible, in consultation with the individual or organization that made the original determination.

(i) *Destruction of matter containing Safeguards Information*. Documents or other media containing Safeguards Information shall be destroyed when no longer needed. The information can be destroyed by burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes no wider than one quarter inch composed of several pages or documents and thoroughly mixed are considered completely destroyed.

43. Section 73.23 is added to read as follows:

§ 73.23 Protection of Safeguards Information-Modified Handling: Specific Requirements.

This section contains specific requirements for the protection of Safeguards Information related to panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source, byproduct, or special nuclear material in greater than or equal to Category 2 quantities of concern; transportation of more than 1,000 Tbq (27,000 Ci) but less than or equal to 100 grams of spent nuclear fuel; research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance; and transportation of greater than or equal to Category 2 quantities of concern. The requirements of this section distinguish Safeguards Information requiring modified handling requirements (SGI–M) from Safeguards Information for facilities and materials needing a higher level of protection, as set forth in § 73.22.

(a) *Information to be protected*. The types of information and documents that must be protected as Safeguards Information-Modified Handling include non-public security-related requirements such as protective measures, interim compensatory measures, additional security measures, and the following, as applicable:

(1) *Physical Protection*. Information not classified as Restricted Data or National Security Information related to physical protection, including:

(i) The composite physical security plan for the facility or site;

(ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical security system not easily discernible by members of the public;

(iii) Alarm system layouts showing the location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources for security equipment, and duress alarms not easily discernible by members of the public;

(iv) Physical security orders and procedures issued by the licensee for members of the security organization detailing duress codes, patrol routes and schedules, or responses to security contingency events;

(v) Site specific design features of plant security communications systems;

(vi) Lock combinations, mechanical key design, or passwords integral to the physical security system;

(vii) The composite facility guard qualification and training plan/measures disclosing features of the physical security system or response procedures;

(viii) Descriptions of security activities which disclose features of the physical security system or response measures;

(ix) Information relating to onsite or offsite response forces, including size, armament of the response forces, and arrival times of such forces committed to respond to security contingency events; and

(x) Engineering and safety analyses, security-related procedures or scenarios, and other information revealing site-specific details of the facility or materials if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(2) *Physical protection in transit.* Information not classified as Restricted Data or National Security Information related to the physical protection of shipments of more than 1000 Tbq (27,000 Ci) but less than or equal to 100 grams of spent nuclear fuel, source material and byproduct material in Category 2 quantities of concern, and special nuclear material in less than a formula quantity (except for those materials covered under § 73.22), including:

(i) Information regarding transportation security measures, including physical security plans and procedures, immobilization devices, and escort requirements, more detailed than NRC regulations;

(ii) Scheduling and itinerary information for shipments (scheduling and itinerary information for shipments that are inherently self-disclosing, such as a shipment that created extensive news coverage or an announcement by a public official confirming receipt, may be decontrolled after shipment departure. Scheduling and itinerary information for shipments that are not inherently self-disclosing may be decontrolled 2 days after the shipment is completed. Scheduling and itinerary information used for the purpose of preplanning, coordination, and advance notification may be shared with others on a ''need to know'' basis and need not

be designated as Safeguards Information-Modified Handling);

(iii) Arrangements with and capabilities of local police response forces, and locations of safe havens;

(iv) Details of alarm and communication systems, communication procedures, and duress codes;

(v) Procedures for response to security contingency events; and

(vi) Engineering or safety analyses, security-related procedures or scenarios and other information related to the protection of the transported material if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(3) *Inspections, audits and evaluations.* Information not classified as National Security Information or Restricted Data pertaining to safeguards and security inspections and reports, including:

(i) Portions of inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system. Disclosure of corrected defects, weaknesses, or vulnerabilities is subject to an assessment taking into account such factors as trending analyses and the impacts of disclosure on licensees having similar physical security systems; and

(ii) Reports of investigations containing general information may be released after the corrective actions have been completed, unless withheld pursuant to other authorities, *e.g.*, the Freedom of Information Act (5 U.S.C. 552).

(4) Correspondence. Portions of correspondence insofar as they contain Safeguards Information designated as Safeguards Information-Modifed Handling, as set forth in paragraphs (a)(1) through (a)(3) of this section.

(5) Other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, that the Commission determines by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material or a facility.

(b) *Conditions for access*,

(1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information designated as Safeguards Information-Modified Handling unless the person has an established ''need to know'' for the information and has undergone a Federal Bureau of Investigation criminal history check using the procedures set forth in § 73.57.

(2) In addition, a person to be granted access to SGI must be trustworthy and reliable, based on a background check or other means approved by the Commission.

(3) The categories of individuals specified in 10 CFR § 73.59 are exempt from the background check requirements in paragraphs (b)(1) and (b)(2) of this section by virtue of their occupational status:

(4) For persons participating in an NRC adjudicatory proceeding other than those specified in § 73.59, the ''need to know'' determination shall be made by the originator of the Safeguards Information upon receipt of a request for access to the Safeguards Information. Where the information is in the possession of the originator and the NRC staff, whether in its original form or incorporated into another document by the recipient, the NRC staff shall make the determination. In the event of a dispute regarding the ''need to know'' determination, the presiding officer of the proceeding shall determine whether the '''need to know''' findings in § 73.2 can be made.

(5) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in this section.

(c) *Protection while in use or storage.*

(1) While in use, matter containing Safeguards Information designated as Safeguards Information-Modified Handling must be under the control of an individual authorized access to such information. This requirement is satisfied if the Safeguards Information designated as Safeguards Information-Modified Handling is attended by such an individual even though the information is in fact not constantly being used. Safeguards Information designated as Safeguards Information-Modified Handling within alarm stations, or rooms continuously occupied by authorized individuals, need not be locked in a file drawer or cabinet.

(2) While unattended, Safeguards Information designated as Safeguards Information-Modified Handling must be stored in a locked file drawer or cabinet. The container shall not identify the contents of the matter contained and must preclude access by individuals not authorized access in accordance with the provisions of this section. Knowledge of lock combinations or access to keys protecting Safeguards Information designated as Safeguards Information-Modified Handling must be limited to a minimum number of personnel for operating purposes who have a ''need to know'' and are otherwise authorized access to Safeguards Information in accordance with the provisions of this part. Access to lock combinations must be strictly controlled so as to prevent disclosure to an individual not authorized access to Safeguards Information designated as Safeguards Information-Modified Handling.

(d) *Preparation and marking of documents or other matter.*

(1) Each document or other matter that contains Safeguards Information designated as Safeguards Information-Modified Handling as described in § 73.23(a) and in this section must be marked to indicate the presence of Safeguards Information with modified handling requirements in a conspicuous manner on the top and bottom of each page. The first page of the document must also contain:

(i) The name, title, and organization of the individual authorized to make a ''Safeguards Information designated as Safeguards Information-Modified Handling'' determination, and who has determined that the document contains Safeguards Information designated as Safeguards Information-Modified Handling;

(ii) The date the determination was made; and

(iii) An indication that unauthorized disclosure will be subject to civil and criminal sanctions.

(2) In addition to the markings at the top and bottom of each page, any transmittal letters or memoranda to or from the NRC which do not in themselves contain Safeguards Information designated as Safeguards Information-Modified Handling shall be marked to indicate that attachments or enclosures contain Safeguards Information designated as Safeguards Information-Modified Handling but that the transmittal document does not (*i.e.*, ''When separated from Safeguards Information designated as Safeguards Information-Modified Handling enclosure(s), this document is decontrolled'').

(3) Any transmittal document forwarding Safeguards Information designated as Safeguards Information-Modified Handling must alert the recipient that protected information is

enclosed. Certification that a document or other media contains Safeguards Information designated as Safeguards Information-Modified Handling must include the name and title of the certifying official and date designated. Portion marking is required only for correspondence to and from the NRC (i.e., cover letters, but not attachments) that contains Safeguards Information designated as Safeguards Information-Modified Handling. The portion marking must be sufficient to allow the recipient to identify and distinguish those sections of the transmittal document or other information containing the Safeguards Information from non-Safeguards Information.

(4) Marking of documents containing or transmitting Safeguards Information with modified handling requirements shall, at a minimum include the words ''Safeguards Information-Modified Handling'' to ensure identification of protected information for the protection of facilities and material covered by § 73.23.

(e) *Reproduction of matter containing Safeguards Information designated as Safeguards Information-Modified Handling.* Safeguards Information designated as Safeguards Information-Modified Handling may be reproduced to the minimum extent necessary, consistent with need, without permission of the originator. Equipment used to reproduce Safeguards Information designated as Safeguards Information-Modified Handling must be evaluated to ensure that unauthorized individuals cannot access the information (e.g., unauthorized individuals cannot access SGI by gaining access to retained memory or network connectivity).

(f) *External transmission of documents and material.*

(1) Documents or other matter containing Safeguards Information designated as Safeguards Information-Modified Handling, when transmitted outside an authorized place of use or storage, must be packaged in two sealed envelopes or wrappers to preclude disclosure of the presence of protected information. The inner envelope or wrapper must contain the name and address of the intended recipient and be marked on both sides, top and bottom, with the words ''Safeguards Information-Modified Handling.'' The outer envelope or wrapper must be opaque, addressed to the intended recipient, must contain the address of the sender, and may not bear any markings or indication that the document contains Safeguards Information designated as Safeguards Information-Modified Handling.

(2) Safeguards Information designated Safeguards Information-Modified Handling may be transported by any commercial delivery company that provides service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

(3) Except under emergency or extraordinary conditions, Safeguards Information designated as Safeguards Information-Modified Handling must be transmitted electronically only by protected telecommunications circuits (including facsimile) or encryption (Federal Information Processing Standard [FIPS] 140–2 or later) approved by the appropriate NRC office. For the purpose of this section, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security contingency event or an event that has potential security significance. Physical security events required to be reported pursuant to § 73.71 are considered to be extraordinary conditions.

(g) *Processing of Safeguards Information-Modified Handling on electronic systems.*

(1) Safeguards Information designated for modified handling may be stored, processed or produced on a computer or computer system, provided that the system is assigned to the licensee's or contractor's facility. Safeguards Information designated as Safeguards Information-Modified Handling files must be protected, either by a password or encryption, to prevent unauthorized individuals from gaining access. Word processors such as typewriters are not subject to these requirements as long as they do not transmit information off-site. (Note: if Safeguards Information designated as Safeguards Information-Modified Handling is produced on a typewriter, the ribbon must be removed and stored in the same manner as other Safeguards Information designated as Safeguards Information-Modified Handling.)

(2) Safeguards Information designated as Safeguards Information-Modified Handling files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that the National Institute of Standards and Technology (NIST) has validated as conforming to Federal Information Processing Standards (FIPS). Safeguards Information designated as Safeguards Information-Modified Handling files shall be properly labeled to indicate the presence of Safeguards Information with modified handling requirements and saved to removable media and stored in a locked file drawer or cabinet.

(3) A mobile device (such as a laptop computer) may also be used for the processing of Safeguards Information designated as Safeguards Information-Modified Handling provided the device is secured in an appropriate locked storage container when not in use. Other systems may be used if approved for security by the appropriate NRC office.

(h) *Removal from Safeguards Information-Modified Handling category.* Documents originally containing Safeguards Information designated as Safeguards Information-Modified Handling must be removed from the Safeguards Information category at such time as the information no longer meets the criteria contained in this Part. A review of such documents to make that determination shall be conducted every 10 years. Documents that are 10 years or older and designated as SGI or SGI–M shall be reviewed for a decontrol determination if they are currently in use or removed from storage. Care must be exercised to ensure that any document decontrolled shall not disclose Safeguards Information in some other form or be combined with other unprotected information to disclose Safeguards Information. The authority to determine that a document may be decontrolled shall be exercised only by the NRC or with NRC approval, or if possible, in consultation with the individual or organization that made the original determination.

(i) *Destruction of matter containing Safeguards Information designated as Safeguards Information-Modified Handling.* Documents or other media containing Safeguards Information shall be destroyed when no longer needed. The information can be destroyed by burning, shredding, or any other method that precludes reconstruction by means available to the public at large. Piece sizes no wider than one quarter inch composed of several pages or documents and thoroughly mixed are considered completely destroyed.

44. In § 73.37, paragraphs (f)(2)(iv), (f)(3)(iii) and (iv), and (g) are revised as follows:

§ 73.37 Requirement for the physical protection of irradiated reactor fuel in transit.

(f) * * *

(2) * * *

(iv) A statement that the information described below in § 73.37(f)(3) is required by NRC regulations to be

protected in accordance with the requirements of §§ 73.21 and 73.22.

(3) * * *

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until at least 10 days after the shipment has entered or originated within the state.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until 10 days after the last shipment in the series has entered or originated within the state and an estimate of the date on which the last shipment in the series will enter or originate within the state.

* * * * *

(g) State officials, state employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in § 73.37(f)(3) shall protect that information against unauthorized disclosure as specified in §§ 73.21 and 73.22.

45. In § 73.57 paragraphs (a)(1) and (2) and (b)(2)(i) and (ii) are revised and paragraph (e)(3) is added to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information.

(a) *General.* (1) Each licensee who is authorized to operate a nuclear power reactor under part 50 or to engage in an activity subject to regulation by the Commission shall comply with the requirements of this section.

(2) Each applicant for a license to operate a nuclear power reactor under part 50 of this chapter or to engage in an activity subject to regulation by the Commission, as well as each entity who has provided written notice to the Commission of intent to file an application for licensing, certification, permitting, or approval of a product subject to regulation by the Commission shall submit fingerprints for those individuals who will have access to Safeguards Information.

(b) * * *

(2) * * *

(i) For unescorted access to the nuclear power facility or (but must adhere to provisions contained in §§ 73.21 and 73.22): NRC employees and NRC contractors on official agency business; individuals responding to a site emergency in accordance with the provisions of § 73.55(a); a representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement at designated facilities who has been certified by the NRC; law enforcement personnel acting in an official capacity; State or local government employees who have had equivalent reviews of FBI criminal history data; and individuals employed at a facility who possess ''Q'' or ''L'' clearances or possess another active government granted security clearance, i.e, Top Secret, Secret, or Confidential;

(ii) For access to Safeguards Information only but must adhere to provisions contained in §§ 73.21, 73.22, and 73.23: The categories of individuals specified in 10 CFR § 73.59.

* * * * *

(e) * * *

(3) In addition to the right to obtain records from the FBI in paragraph (e)(1) of this section and the right to initiate challenge procedures in paragraph (e)(2) of this section, an individual participating in an NRC adjudication and seeking to obtain SGI for use in that adjudication may appeal a final adverse determination by the NRC Office of Administration to the Presiding Officer of the proceeding. Potential witnesses, participants without attorneys, and attorneys for whom the NRC Office of Administration has made a final adverse determination on trustworthiness and reliability may request that the Chairman of the Atomic Safety and Licensing Board Panel designate an officer other than the presiding officer of the proceeding to review the adverse determination.

* * * * *

46. In § 73.59 is revised to read as follows:

§ 73.59. Relief from fingerprinting, identification and criminal history records checks and background checks for designated categories of individuals.

Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and background checks are not required for the following individuals prior to granting access to Safeguards Information or Safeguards Information designated as Safeguards Information—Modifed Handling as defined in 10 CFR 73.2:

(a) An employee of the Commission or the Executive Branch of the United States government who has undergone fingerprinting for a prior U.S. government criminal history check;

(b) A member of Congress;

(c) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. government criminal history check;

(d) The Comptroller General or an employee of the Government Accountability Office who has undergone fingerprinting for a prior U.S. Government criminal history check.

(e) The Governor of a State or his or her designated State employee representative;

(f) A representative of a foreign government organization that is involved in planning for, or responding to, nuclear or radiological emergencies or security incidents who the Commission approves for access to Safeguards Information or Safeguards Information designated as Safeguards Information—Modifed Handling;

(g) Federal, State, or local law enforcement personnel;

(h) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(i) Agreement State employees conducting security inspections on behalf of the NRC pursuant to an agreement executed under section 274.i. of the Atomic Energy Act;

(j) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(k) Any agent, contractor, or consultant of the aforementioned persons who has undergone equivalent criminal history and background checks to those required by 10 CFR §§ 73.22(b) or 73.23(b).

47. A new Appendix I to part 73 is added to read as follows:

Appendix I to Part 73—Category 1 and 2 Radioactive Materials

TABLE I – 1.—QUANTITIES OF CONCERN THRESHOLD LIMITS

Radionuclides	Category 1		Category 2	
	Terabecquerels (TBq)	Curies (Ci)[1]	Terabecquerels (TBq)	Curies (Ci)[1]
Americium-241	6×10^{1}	1.6×10^{3}	6×10^{-1}	1.6×10^{1}
Americium-241/Be	6×10^{1}	1.6×10^{3}	6×10^{-1}	1.6×10^{1}
Californium-252	2×101	5.4×10^{2}	2×10^{-1}	5.4
Curium-244	5×10^{1}	1.4×10^{3}	5×10^{-1}	1.4×10^{1}
Cobalt-60	3×10^{1}	8.1×10^{2}	3×10^{-1}	8.1
Cesium-137	1×10^{2}	2.7×10^{3}	1	2.7×10^{1}
Gadolinium-153	1×10^{3}	2.7×10^{4}	1×10^{1}	2.7×10^{2}
Iridium-192	8×10^{1}	2.2×10^{3}	8×10^{-1}	2.2×10^{1}
Promethium-147	4×10^{4}	1.1×10^{6}	4×10^{2}	1.1×10^{4}
Plutonium-238	6×10^{1}	1.6×10^{3}	6×10^{-1}	1.6×10^{1}
Plutonium-239/Be	6×10^{1}	1.6×10^{3}	6×10^{-1}	1.6×10^{1}
Radium-226	4×10^{1}	1.1×10^{3}	4×10^{-1}	1.1×10^{1}
Selenium-75	2×10^{2}	5.4×10^{3}	2	5.4×10^{1}
Strontium-90 (Y-90)	1×10^{3}	2.7×10^{4}	1×10^{1}	2.7×10^{2}
Thulium-170	2×10^{4}	5.4×10^{5}	2×10^{2}	5.4×10^{3}
Ytterbium-169	3×10^{2}	8.1×10^{3}	3	8.1×10^{1}

[1] The regulatory standard values are given in TBq. Curie (Ci) values are provided for practical usefulness only and are rounded after conversion.

Calculations Concerning Multiple Sources or Multiple Radionuclides

The ''sum of fractions'' methodology for evaluating combinations of multiple sources or multiple radionuclides, is to be used in determining whether a facility or activity meets or exceeds the threshold limits and is thus subject to the physical and/or information security requirements of this part.

I. If multiple sources and/or multiple radionuclides are present in a facility or activity, the sum of the fractions of the activity of each of the radionuclides must be determined to verify the facility or activity is less than the Category 1 or 2 limits of Table 1, as appropriate. Otherwise, if the calculated sum of the fractions ratio, using the following equation, is greater than or equal to 1.0, then the facility or activity meets or exceeds the threshold limits of Table 1 and the applicable physical and/or information security provisions of this part apply.

II. Use the equation below to calculate the sum of the fractions ratio by inserting the actual activity of the applicable radionuclides from Table 1 or of the individual sources (of the same radionuclides from Table 1) in the numerator of the equation and the corresponding threshold activity limit from the Table 1 in the denominator of the equation. Sum of the fraction calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

R_1 = activity for radionuclides or source number 1
R_2 = activity for radionuclides or source number 2
R_n = activity for radionuclides or source number n
AR_1 = activity limit for radionuclides or source number 1
AR_2 = activity limit for radionuclides or source number 2
AR_n = activity limit for radionuclides or source number n

$$\sum_{1}^{n}\left[\frac{R_1}{AR_1}+\frac{R_2}{AR_2}+\frac{R_n}{AR_n}\right]\geq 1.0$$

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

48. The authority citation for part 76 is revised to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005). Sec. 76.7 also issued under Pub. L. 95–601. Sec. 10, 92 Stat 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

49. In § 76.113, paragraph (c) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material—Category I.

* * * * *

(c) The requirements for the protection of Safeguards Information pertaining to formula quantities of strategic special nuclear material (Category I) are contained in §§ 73.21 and 73.22 and parts 25 and 95 of this chapter. Information designated by the U.S. Department of Energy (DOE) as Unclassified Controlled Nuclear Information must be protected in accordance with DOE requirements.

* * * * *

50. In § 76.115, paragraph (d) is added to read as follows:

§ 76.115 Special nuclear material of moderate strategic significance—Category II.

* * * * *

(d) The requirements for the protection of Safeguards Information pertaining to special nuclear material of moderate strategic significance—Category II are contained in §§ 73.21 and 73.22 of this chapter.

51. In § 76.117, paragraph (c) is added to read as follows:

§ 76.117 Special nuclear material of low strategic significance—Category III.

* * * * *

(c) The requirements for the protection of Safeguards Information pertaining to special nuclear material of low strategic significance—Category III are contained in §§ 73.21 and 73.22 of this chapter.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

52. The authority citation for part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as

amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073).

Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

53. In § 150.15, paragraph (a)(9) is added to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(9) The requirements for the protection Safeguards Information in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable.

* * * * *

Dated at Rockville, Maryland this 19th day of October 2006.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 06–8900 Filed 10–30–06; 8:45 am]

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Federal Register

Tuesday,
October 31, 2006

Part V

Department of Housing and Urban Development

Notice of Opportunity To Register Early and Other Important Information for Electronic Application Submission via Grants.gov; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5107–N–01]

Notice of Opportunity To Register Early and Other Important Information for Electronic Application Submission via Grants.gov

AGENCY: Office of Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide instructions and advice to potential applicants applying for funding under HUD's competitive grant programs that are available through Grants.gov. This notice provides information to help applicants better understand the electronic submission process. To facilitate the Fiscal Year (FY) 2007 federal grant application process, prospective applicants for HUD funding should immediately begin the registration process or renew their registration from prior years. HUD believes that by facilitating a better understanding of the electronic submission process, applicants will be able to more easily make the transition to electronic application submission.

Grants.gov is the Federal portal for applicants to electronically find and apply for over 1,000 funding opportunities made available by the twenty-six federal grant-making agencies. Grants.gov offers the applicant community a common Web site where applicants can use one password and ID to apply for a variety of federal assistance programs. To date, all 26 Federal grant-making agencies have posted their funding opportunities and electronic application packages to Grants.gov.

To apply on-line electronically, Grants.gov requires an electronically authorized signature, known as eAuthentication. This requirement for an authenticated electronic signature serves to protect the applicant and the applicant's information, and to assure federal agencies that they are interacting with officials authorized to submit applications on behalf of applicant entities.

Through this notice, HUD is encouraging applicants to complete or update their registration, in advance of HUD posting its FY2007 grant opportunities. HUD found that issuing an Early Registration Notice in FY2006 eliminated many of the registration issues that applicants faced in FY2005, the first year that HUD used Grants.gov for posting its annual SuperNOFA. HUD believes that by issuing this notice in advance of the FY2007 funding cycle, applicants will have sufficient time to carefully review registration and submission requirements and to have their questions addressed regarding the registration and submission processes. HUD anticipates that it will post its funding opportunities in late 2006 or early 2007. HUD strongly encourages prospective applicants for FY2007 HUD grants to register or renew their registration for application submission via Grants.gov as soon as possible by following the instructions in this notice.

DATES: Early registration commences with the issuance of this notice and ends when HUD publishes its SuperNOFA.

FOR FURTHER INFORMATION CONTACT: If you need further information about this Notice, contact the NOFA Information Center, at (800) HUD–8929 ((800) 483–8929). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) HUD–2209 ((800) 483–2209). The NOFA Information Center is open between the hours of 10 a.m. to 6:30 p.m. Eastern Standard Time, Monday through Friday, except on federal holidays.

If you have questions about registration or submissions issues, contact the Grants.gov Contact Center at (800) 518–GRANTS (4726).

Full Text of Announcement

This Notice is divided into two sections. Section 1 describes the registration process including steps to renew/update an existing registration. Section 2 provides guidance to applicants that are experiencing upload or transmission issues. In FY2006, HUD successfully received over 5,000 applications via grants.gov. Less than 1% of applicants experienced submission issues. While these numbers are relatively small, HUD strives to assist all applicants in gaining a better understanding of the electronic submission process. This notice also serves to remind applicants to submit their applications in advance of the deadline date and when the Grants.gov help desk is open so that if issues arise, there is sufficient time to provide timely assistance.

Appendix A of this notice provides step-by step registration instructions to follow. Appendix B provides information on Do's and Don'ts regarding electronic application submission.

Section 1—Completing the Registration Process for New Applicants and Updating a Registration for Applicants That Are Currently Registered

A. The Need To Register With Grants.gov

Many federal grant-making agencies provide funding to organizational entities and some agencies are permitted to fund individuals; however, HUD only provides funding to organizations. This information, therefore, is directed to HUD applicants that are organizational entities.

Before an applicant can apply for a grant opportunity, the applicant must first register with Grants.gov to provide and obtain certain identifying information. Please note, however, that registration is a multi-step process. In addition, the registration process requires the applicant to provide information at Web sites other than Grants.gov. Registration protects both the applicant and the applicable federal agencies. Registration confirms that the applicant has designated a certain individual or entity to submit an application on behalf of the applicant and assures the federal agency that it is interacting with the designated representative of the applicant that has been authorized to submit the application.

B. Registration Steps for Organizations

1. Use of DUNS Numbers. In 2003, the federal government adopted a policy that applicants must obtain a Data Universal Numbering System (DUNS) number in order to receive funding. In order to submit an electronic application via Grants.gov, your organization must have a DUNS number. Dun and Bradstreet (D&B), a company that provides business information credit, marketing and purchasing decisions for more than 70 million businesses worldwide, issues DUNS numbers. Its data universal numbering system issues unique 9-digit numbers that are used by businesses and the federal government to track funding and business related information and relationships. The information provided in the D&B registration will be used by the Central Contactor Registration system in the registration process, so applicants should carefully review their Dun and Bradstreet information for accuracy.

2. Registration in the Central Contractor Registration (CCR). The CCR is the primary vendor database for the federal government. The CCR was established to assist federal government agency acquisitions and procurements. The CCR collects, validates, stores and

disseminates data in support of agency acquisitions. Registration in CCR has been extended from the procurement and acquisition area to grants. For grants, CCR stores an applicant's information, allowing Grants.gov to verify an applicant's identity and identify key business contacts for the organization. The CCR registration process consists of completing a Trading Partner Profile (TPP), which contains general, corporate, and financial information about your organization. While completing the TPP, you will need to identify a CCR Point of Contact (POC) who will be responsible for maintaining the information in the TPP and giving authorization to individuals to serve as Authorized Organization Representatives (AOR) and an E-Business Point of Contact (E-Business POC). The AOR will submit applications through Grants.gov for your organization. The person that completes the TPP can be the CCR POC, E-Business POC, and the AOR or they can be different people.

3. CCR Use of Dun and Bradstreet Information. As part of CCR's ongoing effort to ensure that all registration information is standardized, easily shared across many government systems, and to reduce data entry by registrants, CCR pre-populates the following data fields from D&B: Legal Business Name, Doing Business Name (DBA), Physical Address, and Postal Code/Zip+4. Registrants will not be able to enter/modify these fields in CCR; they will be pre-populated using D&B Data Universal Numbering System record data. During new registration or when updating a record, the registrant has a choice to accept or reject the information provided from D&B. Under the revised system, if the CCR registrant agrees with the D&B supplied information, the D&B data will be accepted into the CCR registrant record. If the registrant disagrees with the D&B supplied information the registrant will need to go to the D&B Web site *http://fedgov.dnb.com/webform* to modify the information currently contained in D&B's records before proceeding with its CCR registration. Once D&B confirms the modification, the registrant must revisit the CCR Web site and ''accept'' D&B's changes. Only at this point will the D&B data be accepted into the CCR record. D&B can take two business days to send modified data to CCR and that timeframe may be longer in some countries.

Large organizations and organizations that set-up separate bank accounts for different grants can set up what is known as DUNS+4 within the CCR record, to track the flow of funding and disbursements within the parent organizations and any number of sub-agencies or departments within the organization. States and universities frequently identify their sub-organizations through the use of DUNS+4 numbering.

4. CCR Employer Identification Number/Taxpayer Identification Number (EIN/TIN) Validation. Please note that as of October 30, 2005, the Central Contractor Registration (CCR) began validating the TIN and Taxpayer Name of each new and updating CCR registrant with the Internal Revenue Service (IRS). The EIN/TIN matching process is a joint effort between the General Services Administration (GSA), Department of Defense (DoD), and the IRS to improve the quality of data in government acquisition systems. If there are discrepancies in the taxpayer information at IRS and the registration information provided through D&B, the discrepancies must be cleared before the registration can be completed or updated.

A notice has gone out to CCR registrants informing them of the IRS validation in CCR registration. In order to complete your CCR registration and qualify as a vendor eligible to bid for federal government contracts or apply for federal grants, the EIN/TIN and Employer/Taxpayer Name combination you provide in the IRS Consent Form at CCR must match exactly to the EIN/TIN and Employer/Taxpayer Name in the IRS database. It will take at least one to two business days to validate new and updated records prior to becoming active in CCR. Therefore, please be sure that the data items provided to D&B match information that you have provided to the IRS. Otherwise, when the validation check with IRS is done, the registration in D&B, and the CCR will not match the IRS information and will result in an error message being generated. This will prevent you from completing your registration until the discrepancies have been resolved. Applicants should allow sufficient time to review their D&B and CCR information. HUD recommends that applicants carefully review their D&B and CCR registration information for accuracy immediately upon publication of this Notice and make any necessary corrections. Beginning the registration process now will help an applicant avoid possible delays with the timely submission of applications.

5. Registration with a Credential Provider. In order to safeguard information, Grants.gov uses E-Authentication, the federal program that ensures secure transactions. E-Authentication defines the level of trust or trustworthiness of the parties involved in a transaction through the use of credential providers. Credential Providers are organizations that validate the electronic identity of an individual through electronic credentials, personal identification numbers, passwords or other identifying information, for Grants.gov. This is the process of determining, with a degree of assurance, that someone is really who he or she claims to be. An Authorized Organization Representative (AOR), the person(s) named by an agency who has legal authority to submit an application for funding on behalf of the agency, must register with a Credential Provider to obtain a USER ID and Password that will be used to register with Grants.gov.

Beginning August 30, 2007, organizations will have a choice of three federally approved credential providers to obtain their authentication services—(1) The Agriculture Department; (2) the Office of Personnel Management's Employee Express; and (3) the current provider—Operational Research Consultants, Inc. (ORC). HUD applicants who already hold a Grants.gov user name and password through ORC and submit applications prior to August 20, 2007, do not have to make any changes to their ORC registration. After August 20, 2007, users will have an option to retain their registration with ORC or choose from the other credential providers on the list.

6. Registration with Grants.gov. After creating a username and password identity at a Credential Provider, an AOR, the person(s) named by an agency to submit an application for funding on behalf of the agency, must register at Grants.gov. The AOR must have legal authority to submit the application on behalf of the organization. Designated AORs register the USER ID and Password created with the Credential Provider at Grants.gov. After the AOR registers with Grants.gov, the organization's E-Business POC will be sent an e-mail from Grants.gov, indicating that someone from the organization has registered as an AOR.

7. Approval of the AOR. The E-Business POC must enter Grants.gov and give the AOR approval to submit an application to Grants.gov. By authorizing a person to submit on behalf of the organization, the organization is stating that the person has the legal authority to submit the application and make a legally binding commitment for the organization. The registration is complete when an AOR has been approved to submit an application on behalf of the organization. If the E-Business POC does not provide

authorization, Grants.gov will not accept the grant application.

C. Renewing Your CCR Registration.

Applicants are required to renew/update their information in CCR on an annual basis. Applicants can renew their organizations' registration at *http://www.ccr.gov.* If you do not renew your registration it will expire, resulting in the rejection of your Grants.gov application. Applicants can renew their organizations' registration at *http://www.ccr.gov.*

D. Time Allotted for Registration

Registration with Grants.gov, which must be completed *prior* to any grant application submission, takes approximately two to four weeks. The length of time depends on when the steps in the registration process are completed; the volume of traffic on the various sites involved in the registration process; and the ability of the applicant to determine who will be the person responsible for submitting the grant application, and having that person authorized through the registration process as the AOR. Registration can take longer if the information provided to D&B and captured in the CCR does not match IRS Taxpayer information data previously provided by the applicant organization. Registering early should allow the applicant sufficient time to complete the registration process and respond to any questions that might arise during the process.

Appendix A of this Notice provides step-by-step registration instructions to follow.

Section 2—Corrective Actions for Application Submission Problems That Affected HUD Applications in FY2006

A. Application Submission

In FY2006, HUD successfully received over 5000 electronic applications and only 30 paper applications. Less than 1 percent of the applicants submitting electronically had a problem that resulted in an application not being successfully submitted. Applicants are advised to submit their applications 24–72 hours prior to the application deadline date so that if any problem arises, the applicant will have sufficient time to correct it and successfully submit the application prior to the deadline date. Please remember that to have a successful submission, applications must be received and validated by Grants.gov prior to 11:59:59 p.m. on the application deadline date. For example, if an application is due on November 10, 2006, you should submit your application no later than November 7, 2006 to allow sufficient time for your application to be validated by Grants.gov.

B. Applications Rejected by Grants.gov and Corrective Actions

The following describes the most common HUD grant application submission problems and recommended corrective actions for them.

1. Incorrect DUNS number. The DUNS number in the application does not match the applicant DUNS number registered at Grants.gov. An improper DUNS number will result in the submitter receiving a rejection notice that states ''INVALID_DUNS_ERROR'' and ''UNAUTHORIZED_SUBMITTER_ERROR'' .

Corrective Action: Upon receiving the ''INVALID_DUNS_ERROR,'' the applicant should immediately check the application DUNS number, correct the error (if any) and resubmit the application. If the DUNS number is correct, the applicant should immediately contact Grants.gov to notify them of the problem and ask why it received the ''INVALID_DUNS_ERROR'' and take any corrective measures required.

2. You receive a rejection message with the following error message: ''UNAUTHORIZED_SUBMITTER_ERROR.''

This error occurs if a submitter has not registered with a Credential Provider and with Grants.gov, or when the E-Business Point of Contact has not approved the submitter as an Authorized Organization Representative (AOR) on Grants.gov.

Corrective Action: The AOR should verify that he or she has registered with a Credential Provider and has registered the credential at Grants.gov. If the answer to both these questions is yes, the E-Business Point of Contact should immediately go to the Grants.gov Web site and approve the submitter as an AOR.

3. Unsuccessful Submission Attempt. The applicant has tried to submit the application but was unsuccessful. When trying to submit the application, the following occurs:

- Nothing happens.
- The screen goes blank.
- The wheel keeps spinning.

Corrective Action: In these cases, your files are not connecting to Grants.gov and the transmission problems are occurring locally. There are several reasons that may be the cause of the problem. Applicants should be aware that every computer is configured differently and many organizations have firewalls that limit the size of files going out or into an organization. These instructions are designed to address the most common reasons faced by applicants.

a. Check to see if you have downloaded the newest version of the application software from Grants.gov. The application will not operate properly if the most recent software update has not been downloaded and completely installed. The Grants.gov software requires applicants to download the software, run an install procedure, and then reboot the computer for the installation to work properly.

b. Grants.gov also recommends uploading the application from your desktop. Call the Grants.gov help desk at (800) 518–4726; operators can walk you through techniques that allow you to upload through your Internet browser.

c. Check to see if your computer has sufficient memory. Check your system, including Random Access Memory and the hard drive, to ensure that your computer has enough available memory to process the application. If your hard drive is nearly full and you have multiple grant applications on your computer that you have successfully submitted or submitted in a previous year, remove those applications from your computer and save them on a CD, DVD, or jump drive so that you can free up needed space on your computer. If the upload still remains a problem, reduce the size of your application by using the facsimile solution for some or all of your attachment files. HUD will not accept an application that is sent entirely by facsimile. At a minimum, the downloaded application package with the xml-based files, including a completed SF–424, must be submitted to Grants.gov. If these suggestions do not solve the problem, immediately contact the Grants.gov help desk.

d. Check if your organization or your Internet Service Provider limits the size of the files sent over the Internet. HUD has found that many organizations have firewalls that set limits on file sizes or access to particular sites. HUD has also found that some dial-up Internet Service Providers limit the size of files uploaded to the Internet. In these circumstances HUD recommends reducing the size of the application package by zipping files using WinZip10. In addition, several other techniques are described below to reduce the file size of a document if you are using Microsoft Word 2000.

(1) Turn off fast saves. Using fast saves to save a document requires more disk space while your document is open than using a full save. You may be able to save disk space by turning off fast

saves. On the Tools menu, click ''Options'', and then click the ''Save'' tab. Clear the Allow fast saves check box.

(2) Delete one or more versions of a document. Creating multiple versions of a document using the Versioning feature may increase file size. To check whether a document contains other versions, click Versions on the File menu. If other versions exist, you may be able to reduce the file size by deleting the oldest versions. Delete one or more versions of a document. On the ''File'' menu, click ''Versions''. Click the version of the document you want to delete. To select more than one version, hold down CTRL as you click each version. Click ''Delete''.

4. Disk Full or Out of Memory. This is related to the size of the files that you are trying to upload and the capacity of your computer to handle the load. See item 3 above.

Corrective Action: Create more room on your computer by taking off old files that are not needed, reducing the size of the files being uploaded, or submitting part of your application using the facsimile solution. There are other ways to address this issue, but because each computer is configured differently and there are numerous variables to take into account as to why an application can not upload to make the connection to Grants.gov, HUD stresses the need to apply early and to submit your application when the Grants.gov help desk is open so that if problems arise, you can contact Grants.gov when the service representatives are there to help you.

5. Computer keeps freezing. Often a computer will ''freeze'' because there is not enough memory or hard storage space to handle the files.

Corrective Action: If your computer freezes, one possible cause may be that you do not have enough memory or hard storage to handle the file. Follow these steps to check your computer's resources. The information will also be useful to the help desk staff in analyzing your problem.

a. Use the Task Manager capability on your computer to close down the task that is not running properly. If needed, shut down the computer and reboot. Be aware that if you have not saved your work in progress when you reboot, you may lose the unsaved portion of your submission. Always periodically save your work.

b. If you have a My Computer Icon on your desktop, right click on it. If you do not have a My Computer Icon on your desktop, go to step d.

c. In the Properties dialog box, on the General tab, look in the lower right corner and record the Processor speed and amount of RAM, then click OK to close the dialog box.

(1) Double click on the same My Computer icon to open Windows Explorer.

(2) Right click on the hard drive or server to where you are saving the file or from which you are uploading the file and select Properties.

(3) Record the size and amounts of free space on the drive.

(4) If the RAM or hard drive free space on your computer is no bigger or only slightly bigger than the file you are working with, that may be the problem.

(5) Be sure to give this information to the help desk when you call.

d. If you do not have a My Computer Icon on your desktop, click on the Start button in the lower left corner of your screen, then select My Computer from the pop-up menu. Select view system information to record processor speed and RAM as in 5c above, then click OK. The Windows Explorer window showing My Computer should remain on your screen. Follow step c above.

6. MEC Error. This is a general Microsoft error that is preventing communication between your computer and Grants.gov. This error is NOT a grants.gov-generated error; it is on the user's end. Grants.gov cannot troubleshoot this type of error code. There could be any number of reasons for this error, but the most common is that the size of the submission is causing a communication interruption.

Corrective Action: You should try to reduce the size of your application package by removing optional attachments or submitting required attachments manually (requires Agency approval). A firewall issue, either within your domain or with your Internet Service Provider, may also cause this.

7. Page not found/Error 404. This is an error message when a URL page that you requested is not available. You may not be able to find the page because of the following: The page does not exist; a mistyped address; an out-of-date bookmark/favorite; or a search engine has an out-of-date listing.

Corrective Action: Check the address to be sure that it is correct. If it is, wait a few moments and try again.

8. Web site found waiting for reply. Message is related to the user's desktop machine/browser.

Corrective Action: Most literature point to spyware/adware infestation that practically hijack the user's browser and cause tremendous slow down or no access at all. This is not related to any of the Grants.gov servers. This may be due to the user's desktop running two firewall software systems. Other industry literature talks about some corporate firewall that can cause this message to appear. There is also evidence that this message is related to users who are using a router connected to residential DSL/Cable services. In this case, it is a bandwidth issue.

9. Submission has been archived for later submission.

Corrective Action: Open Pure Edge viewer, click on the '' gear'' symbol, which is user preferences, and ensure the setting is to ''work online''.

10. Cannot launch viewer. This message occurs when trying to open up a saved application file. It indicates that the previous save resulted in a corrupt file, i.e. unusable.

Corrective Action: Applicant should try to revert to a previously saved version of the file or start over.

11. A virus was detected during the submission of your grant application package.

Corrective Action: Verify if any of your file attachments have a virus. When you have confirmed that you do not have a virus, resubmit your application.

12. Form was illegal XFD format—Processing Exception. You may receive this message after submitting an application. The grant opportunity for which you have applied is no longer accepting applications or may have been removed by the offering agency, or if the agency posted a new application package, you may be submitting an old application.

Corrective Action: Confirm the close date of your application. Confirm that the Funding Opportunity Number and the Competition ID on the package you are trying to submit matches the current package on Grants.gov. If you require additional information, contact the grantor agency directly.

Appendix B provides information on Do's and Don'ts to follow regarding electronic application submission.

For Additional Assistance

If you have questions about registration or submission issues, call the Grants.gov Contact Center at (800) 518–GRANTS (4726) or e-mail *support@grants.gov*. The Contact Center hours of operation are Monday-Friday 7 a.m. to 9 p.m. Eastern Standard Time.

If you need further information about this Notice, contact the NOFA Information Center at (800) HUD–8929 ((800) 483–8929).

If you are a hearing or speech-impaired person, you may reach any of the telephone numbers in this notice by calling the toll-free Federal Information Relay Service at (800) 877–8339.

In addition, HUD has a detailed Desktop Users Guide for Submitting Grant Applications that walks applicants through the electronic process, beginning with finding a funding opportunity, completing the registration process, and downloading and submitting the electronic application. The Desktop Users Guide includes helpful step-by-step instructions, screen shots, and error proof tips to assist applicants in becoming familiar with submitting applications electronically. The Desktop Users Guide is available on line at *http://www.hud.gov/grants/index.cfm*.

Dated: October 23, 2006.

Keith A. Nelson,

Assistant Secretary for Administration.

Appendix A—Registering for Electronic Application Submission

The following five steps must be completed to register with Grants.gov.

Step One: Obtain a Data Universal Number System (DUNS) Number

In order to submit an electronic application via Grants.gov, your organization will need a DUNS number. A DUNS number is a unique nine-character identification number provided by Dun & Bradstreet (D&B). You will use the *same DUNS number throughout the registration and application process*.

Prior to requesting a DUNS number, find out if your organization already has a DUNS number by contacting your chief financial officer or grant administrator. If your organization does not have a DUNS number you can immediately receive one by calling D&B at (866) 705–5711. It takes approximately ten minutes to get a DUNS number and there is no charge.

Note: Your registration is not finished until Steps Two through Five are completed.

Step Two: Register With The Central Contractor Registration (CCR)

Registering with CCR. Your organization must register or annually renew their registration with CCR to establish roles and IDs for representatives that will use Grants.gov to submit electronic applications. If you need assistance with the registration process, you can contact the CCR Assistance Center 24 hours, 7 days a week at (888) 227–2423 or (269) 961–5757 or online at *www.ccr.gov*. In addition, a CCR Handbook is available by clicking on the ''CCR Handbook'' tab at the top of the page at *www.ccr.gov*.

IRS Employer/Taxpayer Name Validation. When you register or renew your registration at CCR, during the registration process, you will complete an IRS Consent Form to allow the validation of your legal business name and Employer Identification Number (EIN) or Tax Identification Number (TIN). The information that you enter in CCR must match the IRS records for the most current tax year reported. Prior to becoming active in CCR, it will take at least one to two business days to validate new and updated records, longer if there are discrepancies. If you have questions about your EIN or TIN, call (800) 829–4933.

CCR Use of DUNS Information. During the CCR registration, your Legal Business Name, Doing Business Name (DBA), Physical Address, and Postal/Zip+4 will be pre-populated from the Dun and Bradstreet (D&B) database. If the information is correct, you can proceed with your registration. If not, you can make corrections at *http://fedgov.dnb.com/webform*. When D&B confirms that a modification has been made, you must re-visit CCR and ''accept'' D&B's changes. This process may take two to five business days.

Trading Partner Profile (TPP). The CCR registration process consists of completing a TPP.

Note: While completing the TPP, you will need to identify a CCR Point of Contact (CCR POC), who will be responsible for updating and renewing the CCR registration, an *E-Business Point of Contact (E-Business POC)* and an alternate, who will be responsible for identifying and naming individual *as an Authorized Organization Representative (AOR)*.

The AOR will submit applications through Grants.gov for your organization *and must be someone that has the right to enter into a legally binding commitment for the organization*. The person that completes the TPP can be the CCR POC, E-Business POC, and the AOR or they can be different people.

To Start the CCR Registration Process:

- Go to *www.ccr.gov*. On the left side of the screen, click on ''Start New Registration''.
- Enter your DUNS number at the next screen, ''New Registration''.
- At the next screen, the CCR will assign a temporary confirmation number that allows you to save your registration as a work in progress. Your temporary confirmation number, along with your DUNS number, will let you access CCR to complete your application at a later date.
- To access your application at a later date, at *www.ccr.gov*, select ''Finish Saved Registration Using Confirmation Number''.
- At the next screen, enter your DUNS number and temporary confirmation number.
- Follow the instructions on the next screens until you complete the TPP.

Create a MPIN. The final step of the TPP requires you to create a *Marketing Partner ID Number (MPIN)*. The MPIN is a self-defined nine character password that the E-Business POC will need to access Grants.gov to authorize the AOR to submit a grant application.

CCR Registration Confirmation. After you complete the TPP, you will receive two notices if your registration was submitted successfully. The first notice welcomes you to CCR and will include a copy of your registration. The second notice provides you with a Web link/address where you can enter your DUNS number and temporary confirmation number to obtain your confidential TPIN.

Note: A *Trading Partner Identification Number (TPIN)*, which is assigned by CCR, will replace the temporary confirmation number when your registration is approved and becomes active.

The TPIN is also your confidential password that confirms that you successfully registered in CCR and allows you to change your CCR information.

Current Registrants without a MPIN. If you currently have an active registration in CCR and you *do not have a MPIN* you will need to:

- Access your CCR registration by clicking on ''Update or Renew Registration using TPIN''.
- Enter your DUNS number and TPIN. Click on the tab named ''Points of Contact'', complete all fields for the E-Business POC and the alternate E-Business POC.
- Scroll down to the bottom of the ''Points of Contact'' page and create your own MPIN.
- Click on the ''Validate/Save'' button.

Renewing your CCR Registration. Applicants are required to renew/update their information in CCR on an annual basis. If you do not renew your registration it will expire and result in your Grants.gov application being rejected.

- To renew your registration, go to *www.ccr.gov*, and click on ''Update or Renew Registrations Using TPIN''.
- Enter your DUNS number and TPIN, and click ''Submit''.
- If there are no changes to the registration, click the ''Validate/Save'' button for the information to register in the system, then click ''Submit''.
- If there are changes, enter the changes, and then click ''Submit''.

Note: You must click on the ''Validate/Save'' or the ''Renew Profile'' button in ''Registration Tools''.

Don't Know Your TPIN?

- If you are registered in CCR, but do not know your TPIN, go to *www.ccr.gov*. Click on ''Update or Renew Registrations Using TPIN''.
- At the next screen click on ''Don't Know Your TPIN? Click Here for a TPIN Letter request''.
- On the next screen enter your DUNS number and click on ''Send TPIN Letter''. A confidential TPIN letter will be mailed to the CCR Point of Contact (POC) identified in the TPP. If you do not know your organization's CCR POC, call (888) 227–2423 for assistance.

Verify Status of Your CCR Registration. You can verify the status of your registration online at *www.ccr.gov* by clicking on ''Search CCR''. When prompted, enter your DUNS number and click ''Search''. The registration status is located at the top of the page. You can also call the CCR Assistance Center for the status of your registration. You should also check the ccr.gov Web site for any registration updates or changes.

Note: Your registration is not finished until Steps Three through Five are completed.

Step Three: Register With the Credential Provider

In order to safeguard the security of your electronic information, Grants.gov utilizes a Credential Provider to determine with certainty that someone is really who they claim to be. An assigned AOR must register with the Grants.gov Credential Provider to receive a username and password, which are needed to submit an application package through Grants.gov.

• To register with the Credential Provider go to: *http://apply.grants.gov/OrcRegister*.

• Scroll down the page and enter your DUNS number and click on ''Register''.

• At the next screen scroll down and select ''Get Your Credentials''.

• Complete and submit all information on the eAuthentication User Information screen.

• On the next screen you will confirm your information, create your own ''User Name'' and ''Password'', and click on ''Submit''. If all information has been entered correctly, you will receive a notice of Registration Success.

Note: Your registration is not finished until Steps Four and Five are completed.

Step Four: Register With Grants.gov

The AOR must register with Grants.gov in order to submit an application for an organization.

• To register with Grants.gov go to: *https://apply.grants.gov/GrantsgovRegister*.

• Enter your Username and Password supplied by the Credential Provider and click on ''Register''. Complete all information on the ''Authorized Organization Representative User Profile'' screen and click ''Submit''.

Upon following all steps correctly, you will receive an e-mail notice that you successfully registered with Grants.gov. The E-Business POC will receive an e-mail notice stating that someone has registered to submit grant applications on behalf of your organization.

Note: Your registration is not finished until Step Five is completed.

Step Five: Authorize an AOR To Submit a Grant Application

This is a final and very critical step in the registration process. Once a potential AOR registers with a Credential Provider and Grants.gov, the E-Business POC will receive an e-mail stating that someone has signed up to become an AOR for their organization. The E-Business POC will need to authorize the AOR as the Authorized Applicant that is approved to submit applications on behalf of the organization, before that person can submit an application.

Note: If an AOR has not been authorized by their E-Business POC, any application that is submitted will be rejected.

• To authorize an AOR to submit applications on behalf of the organization go to: *https://apply.grants.gov/agency/AorMgrGetID*. Or go to *http://www.grants.gov*, under Quick Links, click on E-Biz POC Login.

• Enter your DUNS and MPIN and click on ''Login''. The next screen welcomes you to the ''E-Business Points of Contact'' section where you will be able to add and revoke AOR privileges.

• On the left side of the screen, select ''Manage Applicants''.

• Click on the box (es) next to the name of the AOR(s) that you are assigning rights.

• Click on ''Reassign Roles''.

• At the next screen, use the arrows to move the roles from one box to the other. To provide authorization, the ''Current Roles'' should indicate ''Authorized Applicant''.

• Click on ''Continue''. You will receive a notice that the role has been successfully reassigned.

• Click on ''Continue''. Repeat the steps if you are assigning rights to multiple AORs.

• The AOR will receive an e-mail advising that the E-Business POC has provided them authorization to submit applications on behalf of their organization.

Check your AOR Status.

• An AOR can check their status at *https://apply.grants.gov/ApplicantLoginGetID*.

• Or go to *http://www.grants.gov*, under Quick Links, click on Applicant Login.

• At the next screen enter your Username and Password supplied by the Credential Provider, click on ''Login''.

• On the left side of the screen, select ''Manage Applicant Profile''. Your status will be either—''Approved'' or ''AOR Request Sent''.

• If the status is ''Approved'' you are authorized to submit grant applications on behalf of your organization.

• If the status is ''AOR Request Sent'' you have not been approved and you should contact your E-Business POC and have them authorize you as an AOR with Grants.gov.

For Additional Assistance the following resources are available:

HUD's Desktop Users Guide for Submitting Electronic Applications at: *http://www.hud.gov/grants/index.cfm*. The Guide includes helpful detailed step-by-step instructions, screen shots, and error proof tips to assist applicants in registering, finding, and applying for grants electronically.

Grants.gov registration checklists that guide you through the registration process are available at: *http://www.grants.gov/applicants/register_your_organization.jsp*.

If you have questions or need additional information, call the Grants.gov Contact Center at (800) 518-GRANTS (4726) or e-mail *support@grants.gov*. The Contact Center hours of operation are Monday–Friday 7 a.m. to 9 p.m. eastern standard time.

If you are a hearing or speech-impaired person, you may reach any of the telephone numbers in this guide by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Appendix B—DO'S and DON'TS Regarding Electronic Application Submission

A. What You Should Do

1. DO register early.

2. DO renew your registration with CCR annually.

3. DO provide to Dun and Bradstreet the same Legal Business Name on record at the IRS. The Legal Business Name, Doing Business Name (DBA), Physical Address, and Postal Code/ Zip+4 will be pre-populated in CCR from D&B's records.

4. DO contact the IRS at (800) 829–4933 if you have questions about your Legal Business Name and/or EIN/TIN.

5. DO provide to CCR the same Legal Business Name and Employer Taxpayer Identification Number (EIN) or Taxpayer Identification Number (TIN) that you provided to the IRS. This data must match exactly. If these two fields are not identical at CCR, D&B, and the IRS, an error message will result and you will not be able to complete your registration until the discrepancies have been resolved.

6. DO check your AOR status at Grants.gov to make sure your E-Business POC has authorized you to submit an application on behalf of your organization.

7. DO look at HUD's Desktop Users Guide for Submitting Grant Applications, which walks applicants through the electronic process, beginning with finding a funding opportunity, completing the registration process, and downloading and submitting the electronic application. The Desktop Users Guide includes helpful step-by-step instructions, screen shots, and error proof tips to assist applicants in becoming familiar with submitting applications electronically. The Desktop Users Guide is available online at *http://www.hud.gov/grants/index.cfm*.

8. DO create a special folder for each new application and save all files related to the application in that folder. Some applicants create the folder directly on their computer's desktop. Check all attachment files and make sure they have a file extension of .doc, .pdf, .xls, .jpg, .jpeg or .zip.

9. DO make sure that file extensions are not in upper case. File extension must be lower case for the file to be opened.

10. DO keep file names not more than 50 characters without special characters or spaces in the file name.

11. DO review the application package and all the attachments to make sure it contains all the documents you want to submit. If it does, save it to your computer and remove previously saved versions.

12. DO review the application package and all the attachments to make sure it contains all the documents you want to submit. If it does, save it to your computer and remove previously saved versions.

13. DO run the Check Package for Errors feature on the application package and correct any problems identified.

14. DO expect a Confirmation notice from Grants.gov, which advises that your application has been received and is being processed. This Confirmation includes the Grants.gov Tracking Number; record this number for future use. Until you see a confirmation message on your screen, your application has not been submitted to Grants.gov.

15. DO use the Fax Form HUD–96011 as your Fax Cover Page if you fax attachments. In order for HUD to correctly match a fax to a particular application, the applicant must use and require third parties that fax documentation on its behalf to use the form HUD–96011 as the cover page of the facsimile.

B. What You Should NOT Do

1. DO NOT fax your entire application to HUD. HUD will disqualify applications submitted entirely by fax. Applicants should only use the fax method to submit required documents when they cannot be attached to the electronic application package as a pdf, .doc, .xls, jpeg, or jpg, or the size of the submission is too large to upload from the applicant's computer.

2. DO NOT use more than one of the following search fields (CFDA Number,

Funding Opportunity Number or Funding Opportunity Competition ID) when downloading the grant application package and instructions. If you enter more than one, you will not find the instructions. HUD recommends that you use the CFDA Number.

3. DO NOT wait more than one hour for your application submission to be uploaded to Grants.gov. Stop the transmission and check the available disk and RAM space on your computer. HUD has found that difficulty in uploading a file from the applicant's desktop often occurs because the application package is too large for the applicant's computer to handle, or the applicant's network limits the size of files going in or out, or the Internet service provider has a file size limit. Therefore, in such instances, the application should be reduced in size by removing attachment files and submitting the information via the facsimile method using the form HUD 96011 as the cover page.

4. DO NOT use special characters (example: #, %, /, etc) in a file name.

5. DO NOT include spaces in the file name.

[FR Doc. E6–18224 Filed 10–30–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
October 31, 2006

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs); Funding Priority

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 final priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces a priority for a DRRP on Vocational Rehabilitation (VR): Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals With Blindness or Other Visual Impairments. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2007 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.

Effective Date: This priority is effective November 30, 2006.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related 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. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program, including the DRRP program, in the **Federal Register** on June 7, 2006 (71 FR 32938). 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).

Analysis of Comments and Changes

In response to our invitation in the NPP, five parties submitted comments on the proposed priority addressed in this NFP. An analysis of the comments 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.

Comment: Four commenters expressed concern that the duration and the level of funding for the proposed DRRP may not be adequate to address the research activities proposed under the priority.

Discussion: Although the funding level and the budget period were not addressed in the NPP, and are not subject to public comment, the Department is confident that the proposed funding level and budget period are reasonable.

Changes: None.

Comment: One commenter commended the U.S. Department of Education on its succinct synthesis of the problem, as well as its establishment of a priority for a DRRP that would research transition-age individuals with visual impairments. The commenter also suggested that the following additional issues should be considered for research and examination under the final priority: (1) The vital role of career education in the academic preparation of youths with visual disabilities; (2) The factors leading to disparities between postsecondary achievement and low employment outcomes of youth and young adults with blindness and other visual impairments; (3) The barriers to collaboration among service providers serving youth and young adults with blindness and other visual impairments and the impact of this disconnect on successful transition outcomes; (4) The factors contributing to successful adult outcomes, including orientation and mobility skills, socialization and independent living skills, and training in the use of materials in appropriate alternate media, such as Braille and new accessible information technologies; (5) The role of parents' attitudes and involvement in the transition process; and (6) Job-seeking strategies and the development of competitive employment skills.

Discussion: NIDRR agrees with the commenter that each of the above issues is relevant to the scope of work of the proposed DRRP. Nothing in the proposed priority would preclude an applicant from proposing research that examines any or all of the issues listed by the commenter. However, NIDRR does not believe that it is appropriate to require all applicants to focus their research on one or all of these issues. The peer reviewers will assess the merits of research proposals submitted.

Changes: None.

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**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. 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 either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference 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 invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: This NFP is in concert with President George W. Bush's New Freedom Initiative (NFI) and the Plan. The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom*

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.htm*

1. Through the implementation of the NFI and 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.

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a DRRP on VR: Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals With Blindness or Other Visual Impairments. Under this priority, the project must be designed to contribute to the following outcomes:

(a) Increased knowledge about factors that influence vocational rehabilitation and/or transition outcomes and contribute to the acquisition of skills that correlate with sustained competitive employment and postsecondary success for transition-age individuals with blindness or other visual impairments. The grantee must: (1) Conduct a comprehensive literature review of research in the area of VR transition services that lead to successful employment outcomes for transition-age individuals with blindness or other visual impairments; (2) conduct a preliminary analysis of the Rehabilitation Services Administration (RSA) 911 Case Service Report data and other appropriate data sets to identify all pertinent information related to transition services for individuals with blindness or other visual impairments; and (3) examine factors that affect employment outcomes including the types of transition services provided by VR; the types of transition services provided by special education, if any; the age of the transitioning student at the time of first contact with VR; the amount of interaction the transitioning student has with VR prior to leaving school; the relationship the transition-age individual has with the VR counselor; the transition-age individual's early employment history; the transition-age individual's dependence on Social Security Administration (SSA) benefits; and the transition-age individual's socio-economic factors. In implementing item (3), the grantee must review VR case records from State VR agencies for the blind and State VR combined agencies, and interview consumers, rehabilitation professionals, teachers, postsecondary support service providers, SSA representatives, and other individuals involved in providing transition services.

(b) Improved outcomes for individuals who are blind or visually impaired. Through development, demonstration, and evaluation of intervention methods, the grantee must identify practices that support and lead to improved outcomes for transition-age individuals with blindness or other visual impairments, including outcomes in workforce participation, competitive employment, or other areas of postsecondary success. The grantee should include activities that facilitate development of skills that lead to employment (critical thinking and problem-solving skills, and personal qualities). Grantees must utilize a rigorous (*e.g.*, experimental or quasi-experimental) design.

(c) Dissemination of research findings to State VR agencies, education agencies, consumers, researchers, and other stakeholders.

(d) Coordination with projects sponsored by NIDRR, RSA, and the Office of Special Education Programs to ensure that research conducted under this priority builds on rather than duplicates related research and to ensure effective dissemination strategies. At a minimum, the grantee must coordinate with the NIDRR Rehabilitation Research and Training Center (RRTC) on Measuring Rehabilitation Outcomes and current RSA-sponsored research on related topics (including the post-VR experiences study and the national study of transition policies and practices in State VR agencies, and other relevant projects).

Executive Order 12866

This NFP 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 regulatory action.

The potential costs associated with this NFP 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 NFP, we have determined that the benefits of the final priority justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with this final priority are minimal while the benefits are significant. Grantees may incur some costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

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 and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of this final priority is that the establishment of a new DRRP will support the President's NFI and will improve the lives of persons with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

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: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: October 24, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–18192 Filed 10–30–06; 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 Rehabilitation Research Projects (DRRPs)—Vocational Rehabilitation (VR): Transition Services That Lead to Competitive Employment Outcomes for Transition-Age Individuals With Blindness or Other Visual Impairments

Notice inviting applications for new awards for fiscal year (FY) 2007.

Catalog of Federal Domestic Assistance (CFDA)

Number: 84.133A–4.

Dates: Applications Available: October 31, 2006. Deadline for Transmittal of Applications: January 18, 2007.

Date of Pre-Application Meeting: November 30, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $450,000. The Administration has requested $106,705,000 for the National Institute on Disability and Rehabilitation Research program, of which we intend to use an estimated $450,000 for the Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals With Blindness or Other Visual Impairments competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: $450,000.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 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 maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related 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. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)).

The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The General DRRP 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 April 28, 2006 (71 FR 25472). The Vocational Rehabilitation (VR): Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals with Blindness or Other Visual Impairments 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**.

Absolute Priorities: For FY 2007, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Vocational Rehabilitation (VR): Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals with Blindness or Other Visual Impairments.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

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 April 28, 2006 (71 FR 25472). (d) The notice of final priorities 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 IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $450,000. The Administration has requested $106,705,000 for the National Institute on Disability and Rehabilitation Research program, of which we intend to use an estimated $450,000 for the Transition Services that Lead to Competitive Employment Outcomes for Transition-Age Individuals With Blindness or Other Visual Impairments competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: $450,000.

Maximum Award: We will reject any application that proposes a budget

exceeding $450,000 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 maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 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:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–4. Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** 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 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in 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 a budget 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: October 31, 2006.

Deadline for Transmittal of Applications: January 18, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on November 30, 2006. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 11 a.m. and 1 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 2 p.m. to 4 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Lynn.medley@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (*Grants.gov*), or in paper format by mail or hand delivery.

For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

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 of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2007. Disability Rehabilitation Research Projects-CFDA Number 84.133A–4 is one of the programs included in this project. We request your participation in *Grants.gov.*

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via *Grants.gov.*

• 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.

• If you submit your application electronically you must submit all documents electronically, including the following forms: 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. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). 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 above 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.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on 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 of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

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 applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–4), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–4), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, 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, or

(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, or

(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 84.133A–4), 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—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment 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 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

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 specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- 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 percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/news/fedregister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: October 24, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–18185 Filed 10–30–06; 8:45 am]

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October 31, 2006

Part VII

Securities and Exchange Commission

17 CFR Part 270

Definition of Eligible Portfolio Company Under the Investment Company Act of 1940; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–27538; File No. S7–37–04]

RIN 3235–AJ31

Definition of Eligible Portfolio Company Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Final rule.

SUMMARY: The Commission is adopting two new rules under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''). The new rules more closely align the definition of eligible portfolio company, and the investment activities of business development companies (''BDCs''), with the purpose that Congress intended. The rules expand the definition of eligible portfolio company in a manner that promotes the flow of capital to certain small, developing and financially troubled companies.

DATES: *Effective Date:* November 30, 2006.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or Elizabeth G. Osterman, Assistant Chief Counsel, Office of Chief Counsel, (202) 551–6825, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5030.

SUPPLEMENTARY INFORMATION: The Commission today is adopting new Rule 2a–46 [17 CFR 270.2a–46] and new Rule 55a–1 [17 CFR 270.55a–1], both under the Investment Company Act [15 U.S.C. 80a *et seq.*].[1]

Table of Contents

I. Background
II. Discussion
  A. Rule 2a–46
  B. Rule 55a–1
III. Cost-Benefit Analysis
  A. Benefits
  B. Costs
IV. Consideration of Promotion of Efficiency, Competition and Capital Formation
V. Paperwork Reduction Act
VI. Final Regulatory Flexibility Analysis
  A. Reasons and Objectives of the New Rules
  B. Significant Issues Raised by Public Comment
  C. Small Entities Subject to the Rule
  D. Reporting, Recordkeeping, and Other Compliance Requirements
  E. Commission Action To Minimize Adverse Impact on Small Entities
VII. Statutory Authority

I. Background

In 1980, Congress enacted the Small Business Investment Incentive Act (''SBIIA''), which, among other things, established BDCs as a means of making capital more readily available to small, developing and financially troubled companies that do not have ready access to the public capital markets or other forms of conventional financing.[2] Consistent with this purpose, Section 55(a) of the Investment Company Act generally prohibits a BDC from acquiring any assets unless, at the time of acquisition, at least 70 percent of its total assets are invested in securities of certain specified types of companies (''70 percent basket'').[3] Among other things, the 70 percent basket may include securities of eligible portfolio companies purchased in transactions not involving any public offering,[4] securities of eligible portfolio companies already controlled by the BDC without regard to the nature of the offering,[5] and securities of certain financially distressed companies that do not meet the definition of eligible portfolio company and that are purchased in transactions not involving any public offering.[6]

The definition of eligible portfolio company is central to the restrictions of section 55(a) and the purpose of SBIIA. Section 2(a)(46) first generally defines eligible portfolio company to include only domestic companies that are not investment companies under the Investment Company Act (''domestic operating companies'').[7] Section 2(a)(46)(C) further defines eligible portfolio company under three categories. Many BDCs invest in companies that historically met the criteria of section 2(a)(46)(C)(i).[8] Under section 2(a)(46)(C)(i), an eligible portfolio company includes any company that does not have any class of securities with respect to which a member of a national securities exchange, broker or dealer may extend or maintain margin credit pursuant to the rules or regulations adopted by the Federal Reserve Board under section 7 of the Securities Exchange Act of 1934 (''Exchange Act''). At the time that

[1] Rules 2a–46 and 55a–1 were proposed in Definition of Eligible Portfolio Company under the Investment Company Act of 1940, Investment Company Act Release No. 26647 (Nov. 1, 2004) [69 FR 64815 (Nov. 8, 2004)] (''2004 Proposing Release''). The Commission today also issued a release reproposing Rule 2a–46(b). Definition of Eligible Portfolio Company under the Investment Company Act of 1940, Investment Company Act Release No. 27539 (Oct. 25, 2006).

[2] Pub. L. 96–477, 94th Stat. 2274 (1980) (codified at scattered sections of the United States Code). *See generally* H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21 (1980) (''House Report'').

[3] Section 55(a) of the Investment Company Act [15 U.S.C. 80a–54(a)]. *See* House Report at 23 (''The restrictions are designed to assure that companies electing special treatment as [BDCs] are in fact those that [SBIIA] is intended to aid—companies providing capital and assistance to small, developing or financially troubled businesses that are seeking to expand, not passive investors in large, well-established businesses.'').

Congress did not specifically regulate how a BDC should invest the remainder of its assets (''30% basket''). *See id.* at 31, 38–40. Congress clarified, however, that a BDC would be required to invest its 30% basket in a manner consistent with the overall purpose of SBIIA. *Id.* at 39–40 (''One such purpose would be to allow an investment * * * in a publicly-held company whose success may be stimulated or revived by the infusion of new capital or managerial assistance. A second purpose might be to recognize the need for [BDCs] * * * to have a source of cash flow to fund current operations or to meet contingencies which may arise.'').

[4] *See* Section 55(a)(1) of the Investment Company Act. *See also* Section 2(a)(46) of the Investment Company Act [15 U.S.C. 80a–2(a)(46)] (statutory definition of eligible portfolio company).

[5] *See* Section 55(a)(2) of the Investment Company Act, referring to companies with respect to which the BDC satisfies the requirements of Section 2(a)(46)(C)(ii) of the Act. Section 2(a)(46)(C)(ii) provides that a company that meets the initial requirements set forth in Sections 2(a)(46)(A) and (B) is an eligible portfolio company if ''it is controlled by a [BDC], either alone, or as part of a group acting together, and such [BDC] in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company.''

[6] *See* Section 55(a)(3) of the Investment Company Act (includes, among others, companies that have filed for bankruptcy). In addition, a BDC generally may purchase the securities of an eligible portfolio company from any person in a non-public offering if there is no ready market for the securities and, immediately before the purchase, the BDC owns at least 60% of the issuer's outstanding equity securities. Section 55(a)(4) of the Investment Company Act. BDCs may also invest in securities received in exchange for, or distributed on or with respect to, the securities described in paragraphs (1) through (4) of Section 55(a) or pursuant to the exercise of options, warrants or other rights relating to these securities and in cash and certain short-term securities. Sections 55(a)(5) and (6) of the Investment Company Act.

[7] *See* House Report at 29. Sections 2(a)(46)(A) of the Investment Company Act defines eligible portfolio company to include (among other things) companies organized under the laws of, and with their principal business in, one or more states of the United States. Section 2(a)(46)(B) of the Investment Company Act generally excludes from the definition of eligible portfolio company any company that meets the definition of investment company under section 3 of the Investment Company Act, or that is excluded from the definition of investment company by Section 3(c) of the Act, but includes as an eligible portfolio company any small BDC that is licensed by the Small Business Administration and that is a wholly-owned subsidiary of a BDC.

[8] In addition to section 2(a)(46)(C)(i), discussed *infra*, section 2(a)(46)(C)(ii) includes in the definition of eligible portfolio company any issuer in which the BDC or certain affiliates own a controlling interest, *see supra* note 5, and section 2(a)(46)(C)(iii), enacted in 1996, includes in the definition any issuer that has total assets of not more than $4 million, and capital and surplus (shareholder equity minus retained earnings) of not less than $2 million.

section 2(a)(46) was adopted, Congress generally perceived the Federal Reserve Board's definition of ''margin security'' to be a ''rational and objective test'' that could be used to determine whether a company has ready access to the public capital markets or other sources of financing.[9] Nevertheless, Congress recognized that the definition's reliance on the Federal Reserve Board's margin rules might need to be adjusted in the future. Accordingly, Congress specifically gave the Commission rulemaking authority under section 2(a)(46)(C)(iv) of the Investment Company Act to expand the definition of eligible portfolio company.[10]

Since 1980, the Federal Reserve Board has periodically amended its definition of margin security to increase the types of securities that would fall within that definition under its rules. In 1998, for reasons unrelated to small business capital formation, the Federal Reserve Board adopted amendments to those rules that had the unintended consequence of reducing the number of companies that meet the definition of eligible portfolio company by expanding the definition of margin security to include all publicly traded equity securities and most debt securities.[11]

On November 1, 2004, we proposed for comment Rules 2a–46 and 55a–1 under the Investment Company Act.[12] The proposed rules were designed to address the impact of the Federal Reserve Board's 1998 amendments on the definition of eligible portfolio company by realigning that definition, and the investment activities of BDCs, with the purpose of SBIIA.

Generally, proposed Rule 2a–46 would have defined eligible portfolio company in one of two ways. Proposed Rule 2a–46(a) would have defined eligible portfolio company to include any domestic operating company[13] that does not have any class of securities listed on a national securities exchange (''Exchange'').[14] Proposed Rule 2a–46(b) would have defined eligible portfolio company to include any domestic operating company that has a class of securities listed on an Exchange but (1) has received notice that its securities will be delisted and (2) is not eligible to list its securities on any Exchange. Proposed Rule 55a–1 would have conditionally permitted a BDC to include in its 70 percent basket follow-on investments in any company that was an eligible portfolio company as defined by proposed Rule 2a–46 at the time of the BDC's initial investment(s) in it, but no longer met that definition.

II. Discussion

We received thirty-six comment letters that addressed the proposed rules.[15] Commenters generally agreed that Commission rulemaking is appropriate at this time. Virtually all commenters supported proposed Rule 55a–1, and most commenters agreed with the definition of eligible portfolio company set forth in proposed Rule 2a–46(a). Some commenters, however, were concerned that proposed Rule 2a–46(b) would not include many of the small public companies whose securities are listed on an Exchange that historically would have met the definition of eligible portfolio company before the margin rule amendments. In addition, some commenters argued that some small companies that list their securities on an Exchange may not fall within the definition set forth in proposed Rule 2a–46(b), but nevertheless may have difficulties accessing conventional sources of capital and raising capital on the public capital markets. These commenters argued that these companies should qualify as eligible portfolio companies under the rule.[16] Commenters also generally stated that proposed Rule 2a–46(b) was unworkable.[17]

After considering the comments received, the Commission today is adopting Rule 2a–46, initially proposed as Rule 2a–46(a), to define ''eligible portfolio company'' to include all private companies and all public companies whose securities are not listed on an Exchange. We estimate that, based on June 2006 data, 61.4 percent (6,041/9,845) of all public domestic operating companies qualify as eligible portfolio companies under Rule 2a–46.

We are not, however, adopting proposed paragraph (b). We are sensitive to some commenters' concerns that the proposed rule was too narrow. Accordingly, we are seeking comment on reproposed Rule 2a–46(b) in a separate release.[18]

We also are adopting Rule 55a–1 today.[19] That rule conditionally allows BDCs to make follow-on investments in companies that met the definition of eligible portfolio company under Rule 2a–46 at the time of a BDC's initial investment(s) in them, but that do not meet that definition at the time of the BDC's follow-on investment.

We discuss the rules that we are adopting today in greater detail below.

A. Rule 2a–46

Rule 2a–46 defines eligible portfolio company to include all private domestic operating companies[20] and those public domestic operating companies whose securities are not listed on an

[9] *See* House Report at 30–31.

[10] House Report at 31. Under section 2(a)(46)(C)(iv), the term eligible portfolio company includes any issuer that, in addition to meeting the requirements of sections 2(a)(46)(A) and (B), ''meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of [the Act].'' *See* House Report at 23 (''* * * the Commission is given rulemaking authority to expand the class of eligible portfolio companies, following certain specific standards.''). The legislative history also makes clear that the intent of this provision ''is to enable the Commission through the administrative process to broaden, if appropriate, the category of eligible portfolio company.'' While stating that BDCs ''already have substantial freedom of action to purchase securities of companies which are not eligible portfolio companies,'' referring to the 30% basket, Congress also noted its expectation that ''the Commission would institute [rulemaking] proceedings to consider whether the definition of eligible portfolio company can be expanded, consistent with the purpose of the legislation, to increase the flow of capital to small, developing businesses or financially troubled businesses. Among the objective factors which the Commission may consider in such proceedings are the size of such companies, the extent of their public ownership, and their operating history as going concerns and public companies.''). *See* House Report at 31.

[11] *See* 2004 Proposing Release, *supra* note 1 at nn. 19–23 and accompanying text.

[12] *Id.*

[13] The proposed rule incorporated the provisions of section 2(a)(46)(A) and (B). *See supra* note 7.

[14] The rule as proposed also would have defined eligible portfolio company to include any domestic operating company that does not have any class of securities listed on an automated interdealer quotation system of a national securities association (*i.e.*, The NASDAQ Stock Market LLC (''Nasdaq'')). On August 1, 2006, Nasdaq began operating as a national securities exchange registered under section 6(a) of the Exchange Act.

[15] Commenters included members of Congress, BDCs, law firms, trade associations and small businesses that had received financing from a BDC. The comment letters are available for inspection in the Commission's Public Reference Room at 100 F Street, NE., Washington, DC 20549 (File No. S7–37–04). They also may be viewed at *http://www.sec.gov/rules/proposed/ic-26647.htm.*

[16] *See, e.g.*, comments of UTEK (Jan. 7, 2005); comments of Gladstone Capital (Jan. 6, 2005); comments of Thompson & Knight (Jan. 4, 2005). *But see* comments of the Committee on Federal Regulation of Securities of the Business Law Section of the American Bar Association (Jan. 5, 2005) (supporting proposal in full); comments of the Investment Company Institute (Jan. 6, 2005) (supporting proposal in full). A few commenters also argued that the proposed rule may harm BDC shareholders because it would increase the risk profile of a BDC. *See, e.g.*, comments of Allied Capital (Jan. 7, 2005). We discuss this comment below. *See infra* notes 24–25 and accompanying text.

[17] *See, e.g.*, comments of Sherman & Sterling LLP (Jan. 7, 2005).

[18] *See supra* note 1.

[19] Rule 55a–1 as adopted has been modified from the proposed rule merely to refer to Rule 2a–46 as adopted, rather than reciting the definition of eligible portfolio company set forth in Rule 2a–46.

[20] Like Section 2(a)(46) and the proposed rule, Rule 2a–46 defines eligible portfolio company to include only domestic operating companies. *See supra* notes 7 and 13 and accompanying text.

Exchange.[21] Public domestic operating companies whose securities are quoted on the over-the-counter bulletin board (''OTCBB'') and through Pink Sheets LLC (''Pink Sheets'') are not listed on an Exchange, and therefore are eligible portfolio companies under this provision.

Rule 2a–46 in our view provides a workable and appropriate test for determining whether a company is an eligible portfolio company. The rule more closely aligns the definition of eligible portfolio company with the purpose of SBIIA by including many of the types of companies that Congress originally intended to benefit from BDC financing that may have lost their eligible portfolio company status because of the change in the margin rules. Rule 2a–46 is consistent with the public interest, the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.[22]

Most commenters supported proposed Rule 2a–46(a), and agreed that this approach would establish a clear, workable standard that correlates to whether a company has access to publicly raised capital.[23] A few commenters, however, raised a concern that this provision, when coupled with the definition set forth in proposed paragraph (b), would cause BDCs to focus their investment activities on companies that are in financial distress because of their view that most public companies that are quoted on the OTCBB or through Pink Sheets are financially troubled.[24]

Rule 2a–46 does not require BDCs to focus their investment activities in financially troubled companies whose securities are traded on the OTCBB or through Pink Sheets. Although some companies have their shares traded on the OTCBB or though Pink Sheets because of financial circumstances, this is not true for all companies whose securities are traded on these quotation mediums. Rather, OTCBB and Pink Sheets companies also include small public companies that do not meet the minimum listing standards of one of the Exchanges, and companies that wish to become more developed before applying to list their securities on an Exchange even though they may already be eligible to do so.[25] In other words, although companies whose securities are traded on the OTCBB and through Pink Sheets include financially troubled companies, they also include small, developing, financially stable public companies. Thus, we believe that including companies that are traded on the OTCBB or through Pink Sheets as eligible portfolio companies under Rule 2a–46 will not require BDCs to change their investment strategies to focus on financially troubled companies. Instead, the rule is designed to more closely align the definition with the purpose of SBIIA.

We note that OTCBB and Pink Sheets companies also include a few large companies that do not list their securities on an Exchange even though they may meet applicable listing requirements. With this in mind, we had asked in the Proposing Release whether we should exclude from the definition of eligible portfolio company any company that would meet the lowest initial quantitative listing standard of any Exchange, regardless of whether the company enters into a listing agreement with the Exchange. Commenters, however, argued that a company that may meet the lowest initial quantitative listing of any Exchange may nevertheless not have access to the public capital markets.[26] These comments have persuaded us not to adopt this approach.

B. Rule 55a–1

Proposed Rule 55a–1, which virtually all commenters supported, is adopted.[27] As adopted, Rule 55a–1 permits a BDC to include in its 70 percent basket follow-on investments in a company that met the definition of eligible portfolio company under Rule 2a–46 at the time of the BDC's initial investment(s) in the company, but subsequently would not meet the definition of eligible portfolio company because the company no longer meets the requirements of that rule (*i.e.*, following the BDC's initial investment(s) in the company, the company listed its securities on an Exchange), subject to certain conditions. These conditions permit a BDC to make a follow-on investment only if the BDC, at the time of the follow-on investment: (1) Owns at least 50 percent of (a) the greatest number of equity securities of such company, including securities convertible into or exchangeable for such securities, and (b) the greatest amount of certain debt securities of such company held by the BDC at any time during the period when such company was an eligible portfolio company; and (2) is one of the twenty largest holders of record of the company's outstanding voting securities.[28] Rule 55a–1 is appropriate in the public interest and consistent with the protection of investors and the purposes and policies fairly intended by the policy and provisions of the Act.

III. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. In the Proposing Release we requested public comment and specific data regarding the costs and benefits of the proposed rules. Several commenters suggested that proposed Rule 2a–46(a) would benefit BDCs by addressing the impact caused

[21] Under this provision, an issuer would be an eligible portfolio company if it does not have a class of securities listed on a national securities exchange registered under Section 6(a) of the Exchange Act, [15 U.S.C. 78f(a)] such as the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex''), and Nasdaq. *See supra* note 14.

[22] *See supra* note 10.

[23] *See, e.g.*, comments of American Capital Strategies Ltd. (Jan. 7, 2004); comments of Sherman & Sterling LLP (Jan. 7, 2005). We note that the House of Representatives has passed legislation that in part defines eligible portfolio company in a manner similar to the definition that we are adopting today. *See* H.R. 436, 109th Cong., 1st Sess. (2005) (an eligible portfolio company includes any company that ''does not have any class of equity securities listed for trading on a national securities exchange or traded through the facilities of a national securities association as described in Section 15A of the Securities Exchange Act of 1934''). S. 1396, which is identical to H.R. 436, was introduced in the Senate on July 14, 2005. S. 1396, 109th Cong., 1st Sess. (2005). Both H.R. 436 and S. 1396 are currently pending before the Senate Committee on Banking, Housing and Urban Affairs.

[24] Comments of UTEK (Jan. 7, 2005); comments of Allied Capital (Jan. 7, 2005). Some commenters also raised the concern that the proposed rule would harm BDC shareholders by raising BDCs' risk profiles. Rule 2a–46, however, is intended to address the inadvertent reduction in the number of companies that qualify under Section 2(a)(46) by the amendment to the margin rules. The rule does not alter the statutory mandate or requires a BDC to invest in any particular company. Further, Congress addressed investor protection concerns with respect to BDC shareholders in 1980. *See* House Report at 22 (explaining that SBIIA ''is intended to preserve to the fullest possible extent * * * [investor] protections, while at the same time reducing unnecessary regulatory burdens.''). In this regard, the federal securities laws require, among other things, BDCs to disclose to their shareholders the risks associated with investment and to manage their business consistent with their fiduciary obligations.

[25] *See* ''A Little About The Pink Sheets'' at *www.PennyMarkets.com. See also* Testimony of James A. Connolly III representing the CEO Council before the Subcommittee of Oversight and Investigations of the House Committee on Financial Services (Sept. 23, 2004) (the OTCBB and Pink Sheet companies are '' 'engines of economic growth, job creation and innovation.' Our market space of 7000 companies includes hundreds of millions of dollars in market capitalization, tens of thousands of employees, and likely hundreds of thousands of stockholders.'').

[26] *See* comments of Thompson & Knight (Jan. 4, 2005); comments of American Capital Strategies (Jan. 7, 2006).

[27] *See supra* note 19.

[28] The rule incorporates the conditions set forth in Section 55(a)(1)(B), the section that permits a BDC to make follow-on investments in a company that was an eligible portfolio company at the time of the BDC's initial investment(s), but that subsequently lost its status as an eligible portfolio company because it issued margin securities.

by changes in the margin rules.[29] Another commenter argued that the Commission calculated incorrectly the number of companies that the proposed rule would benefit and wrote that the proposal would benefit even fewer companies than the Commission estimated.[30] We received no comments on the costs and benefits of proposed Rule 55a–1.

A. Benefits

Rules 2a–46 and 55a–1 would more closely align the definition of eligible portfolio company with the purpose that Congress intended when it established BDCs as a source of financing for certain types of companies. These companies often need capital for continued development and growth, but may be unable to borrow money through conventional sources or may not have ready access to the public capital markets. Rules 2a–46 and 55a–1 would also benefit BDCs by recapturing companies that Congress originally intended to make eligible for BDC investment as part of a BDC's 70 percent basket.

A number of companies may have lost their eligible portfolio company status as a result of amendments to the Federal Reserve Board's margin rules. BDCs may be currently required to include in their 30 percent basket—rather than in their 70 percent basket—any investment in these companies, notwithstanding the fact that they may be the type of companies that Congress intended to benefit from BDC financing.

Rule 2a–46 defines an eligible portfolio company to include all private companies and those public companies whose securities are not listed on an Exchange. The Commission's Office of Economic Analysis (''OEA'') estimates that, as of June 2006, there were a total number of 6,041 domestic operating companies with securities that were traded on the OTCBB and through Pink Sheets, and therefore would qualify as eligible portfolio companies under the rule. OEA reached this conclusion by first calculating the number of companies whose securities are trading on the OTCBB (3,295 companies) and through Pink Sheets (4,794 companies), and then removing from these figures estimates of all foreign companies, investment companies and companies that are excluded from the definition of investment company by Section 3(c) of the Investment Company Act (*e.g.*, REITS, banks, insurance companies) because both Section 2(a)(46) of the Investment Company Act and Rule 2a–46 exclude these types of companies from the definition of eligible portfolio company (a deduction of 776 companies from OTCBB and 1,273 companies from Pink Sheets). OEA thus concluded that, as of June 2006, there were a total of 6,041 domestic operating companies (2,519 OTCBB companies and 3,522 Pink Sheets companies) that would qualify as eligible portfolio companies. OEA estimates that these 6,041 companies represent approximately 61.4 percent (6,041/9,845) [31] of all public domestic operating companies that could qualify as eligible portfolio companies under Rule 2a–46.

In the Proposing Release, we explained that OEA estimated that 60 percent of public domestic operating companies do not have securities that trade on an Exchange, and thus would meet the definition of eligible portfolio company under proposed Rule 2a–46(a). We further explained that even more public companies should qualify as eligible portfolio companies by virtue of meeting the requirements of proposed paragraph (b) of that rule (which, as noted previously, is being reproposed).[32]

We note that one commenter argued that the Commission calculated incorrectly the number of companies that the proposed rule would benefit and wrote that the proposal would benefit even fewer companies than the Commission estimated. The commenter argued that proposed Rule 2a–46(a) (which we are adopting today as Rule 2a–46) would capture only 52.4 percent of public companies.[33]

The commenter's figure is lower than the figure calculated by OEA. It appears that the commenter did not remove from its data foreign companies, investment companies and companies that are excluded from the definition of investment company by Section 3(c). As discussed previously, because Section 2(a)(46) excludes these companies from the definition of eligible portfolio company, we believe that they should be excluded from the total number of companies trading on U.S. markets when quantifying the benefits of the rule.

Rule 55a–1 provides additional benefits to certain companies that met the definition of eligible portfolio company under Rule 2a–46 at the time of the BDC's initial investment(s) in them but that subsequently lost their eligible portfolio company status under Rule 2a–46, by allowing BDCs to make follow-on investments in such companies under certain conditions.

Finally, we note that both Rule 2a–46 and Rule 55a–1 would benefit BDCs by expanding the universe of investments that may be included in their 70 percent baskets. It also benefits BDCs by addressing the uncertainty caused by changes in the margin rules in the operation of BDCs. As one commenter noted, a ''technical flaw'' in the definition of eligible portfolio company arose as a result of changes to the margin rules which imposed substantial constraints on BDC investments. The commenter expressed its view that proposed Rule 2a–46(a) had corrected this flaw.[34]

B. Costs

While Rules 2a–46 and 55a–1 might impose certain administrative compliance costs on BDCs, we expect such costs to be minimal and commenters provided no data as requested in the 2004 Proposing Release. Under Rule 2a–46, a BDC would need to determine, prior to investing in a company, whether the company has a class of securities listed on an Exchange. Such information is easily obtainable through reliable third-party sources. Furthermore, Section 55 of the Investment Company Act generally requires a BDC to invest in eligible portfolio companies through privately negotiated transactions. Thus, this information would also be readily available to a BDC from the company during the course of these negotiations.

We also expect that a BDC's costs relating to the requirements of Rule 55a–1 will be minimal. Rule 55a–1 permits a BDC to include in its 70 percent basket follow-on investments in a company that met the definition of eligible portfolio company under Rule 2a–46 when the BDC made its initial

[29] *See, e.g.*, comment of American Capital Strategies (Jan. 7, 2005); comments of the Committee on Federal Regulation of Securities of the Business Law Section of the American Bar Association (Jan. 5, 2005).

[30] Comments of Williams & Jensen (Jan. 7, 2005). In addition, most commenters urged the Commission to modify the proposed rule to capture more small companies whose securities are listed on an Exchange. The Commission is reproposing Rule 2a–46(b) to address this concern. *See supra* note 1.

[31] OEA concluded that, as of June 2006, there were 9,845 public domestic operating companies by calculating the number of companies whose securities are listed on Nasdaq, NYSE and Amex, in addition to those companies whose securities are trading on the OTCBB and through Pink Sheets, corrected for cases where individual companies had multiple classes of securities listed (60 companies), and then removing from this number foreign companies, investment companies, and companies that are excluded from the definition of investment company by Section 3(c). *See* Sections 2(a)(46)(A) and (B), *supra* note 7.

[32] *See* 2004 Proposing Release, *supra* note 1 at n.49 and accompanying text.

[33] Comments of Williams & Jensen (Jan. 7, 2005).

[34] *See, e.g.*, comment of American Capital Strategies (Jan. 7, 2005). *See also* comments of Capital Southwest Corp. (Dec. 28, 2004).

investment(s), but that does not meet that definition at the time of the follow-on investment. A BDC generally may make follow-on investments under the rule only if, at the time of the follow-on investment, the BDC owns at least 50 percent of (1) the greatest number of equity securities of such company, including securities convertible into or exchangeable for such securities and (2) the greatest amount of certain debt securities of such company held by the BDC at any time during the period when such company was an eligible portfolio company. In addition, the rule requires a BDC that makes such a follow-on investment to be one of the twenty largest holders of record of the company's outstanding voting securities at the time of that investment.

These requirements mirror the requirements set forth in Section 55(a)(1)(B) of the Investment Company Act, the provision that permits a BDC to include in its 70 percent basket certain follow-on investments in companies that were eligible portfolio companies at the time of the BDC's initial investment(s), but that subsequently lost that status because they issued marginable securities. Accordingly, BDCs already make similar types of determinations when considering whether to make follow-on investments in a company that had lost their eligible portfolio company status because they had issued marginable securities. We anticipate that the rule will impose only minimal, if any, costs on companies.

IV. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[35] In the Proposing Release, we requested comment on our analysis of the impact of the proposed rules on efficiency, competition and capital formation. Although we did not receive any comments that specifically addressed proposed Rule 2a–46(a), which is the provision that we are adopting today, we did receive comments about the entire rule.

Specifically, some commenters argued that proposed Rule 2a–46 was too narrow and did not capture all of the very small public companies that could benefit from BDC financing.[36] We interpreted this comment to suggest that capital formation may have been limited under the proposed rule. We are sensitive to this concern and therefore are seeking comment on reproposed Rule 2a–46(b) in a separate release.[37]

Some commenters also expressed a concern that proposed Rule 2a–46(a), when coupled with the definition set forth in proposed paragraph (b), would cause BDCs to focus their investment activities on companies that are in financial distress because of their view that most public companies that are quoted on the OTCBB or through Pink Sheets are financially troubled.[38] We interpret this comment to suggest that the rule does not promote efficiency and would impede capital formation. Rule 2a–46 as adopted, however, does not require BDCs to focus their investment activities in financially troubled companies. Rather, Rule 2a–46 allows BDCs to invest in all companies whose securities are traded on the OTCBB and through Pink Sheets, including small, developing, financially stable public companies, which are among the types of companies that Congress intended to benefit from BDC financing.[39]

As discussed, the new rules more closely align the definition of eligible portfolio company, and the investment activities of BDCs, with the purpose that Congress intended. Rule 2a–46 defines eligible portfolio company to include all private companies and approximately 61.4 percent of public domestic operating companies. Rule 55a–1 permits a BDC to include in its 70 percent basket follow-on investments in a company that met the definition of eligible portfolio company under Rule 2a–46 when the BDC made its initial investment(s), but that does not meet that definition at the time of the follow-on investment. Both rules will promote efficiency, competition and capital formation.

Specifically, both rules promote efficiency by more closely aligning the definition of eligible portfolio company with the purpose of SBIIA. To the extent that BDC investments represent additional capital to certain small companies, these rules enhance efficiency. Efficiency will be enhanced because the rules address the unintended adverse impact that the amendments to the margin rules have had on the ability of BDCs to provide financing to these companies. Rule 2a–46 in our view also promotes efficiency by providing a workable and appropriate test for determining whether a company is an eligible portfolio company. Rule 55a–1 will further enhance efficiency by making it easier for BDCs to make follow-on investments in companies that no longer meet the definition of eligible portfolio company under Rule 2a–46.

We also anticipate that these rules will promote competition. The market for private equity and debt investments can be highly competitive. Since their establishment, BDCs have competed with various sources of capital, including private equity funds, hedge funds, investment banks and other BDCs, to provide financing to certain small businesses. We expect that the rules will encourage competition by addressing the impact and uncertainty caused by changes in the margin rules on BDC investment. Under the rules, BDCs will be able to compete with other entities that provide capital to small, developing and financially troubled companies in a manner that is consistent with the statutory requirement that at least 70 percent of a BDC's assets must be invested in those businesses at the time of any new investment. We further note that shareholders of companies that had lost their status as eligible portfolio companies will benefit under the rules because such companies may now more readily consider BDCs as a source of financing.

Finally, we anticipate that the new rules will promote capital formation. As mentioned above, eligible portfolio company is broadly defined to include all private companies and a significant portion of public domestic operating companies. The definition, however, is designed to ensure that the investment activities of BDCs remain focused primarily on the types of companies that Congress intended BDCs to assist.

V. Paperwork Reduction Act

The Commission has determined that these rules do not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604, which relates to new Rules 2a–46 and 55a–1 under the Investment Company Act. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance

[35] 15 U.S.C. 80a–2(c).

[36] *See supra* note 16 and accompanying text.

[37] *See supra* note 1.

[38] *See supra* note 24 and accompanying text.

[39] *See supra* note 25 and accompanying text.

with 5 U.S.C. 603 and was published in the Proposing Release.[40]

A. Reasons and Objectives of the New Rules

As described more fully in Sections I. and II. of this Release, the objectives of the new rules are to more closely align the definition of eligible portfolio company set forth under the Investment Company Act, and the investment activities of BDCs, with the purpose intended by Congress when it established BDCs in 1980. The rules are designed to recapture in the definition of eligible portfolio company companies that Congress originally intended to include within the definition, but that may have lost their eligible portfolio company status as a result of the 1998 amendment to the Federal Reserve Board's margin rules.

B. Significant Issues Raised by Public Comment

When the Commission proposed the rules that are being adopted today, comment was requested on the proposal and the accompanying IRFA. We received thirty-six comment letters that addressed the proposed rules. As discussed, some commenters believed that proposed Rule 2a–46 was too narrow and did not include some small public companies that can benefit from BDC financing. In a separate release, we are seeking comment on reproposed Rule 2a–46(b), which would address this concern. None of the comment letters, however, specifically addressed the IRFA.

C. Small Entities Subject to the Rule

Rules 2a–46 and 55a–1 affect both BDCs and companies that qualify as small entities under the Regulatory Flexibility Act. For purposes of the Regulatory Flexibility Act, a BDC is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[41] As of December 2005, there were 87 BDCs, of which 66 were small entities. A company other than an investment company is a small entity under the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.[42] We estimate that there are approximately 2,500 companies, other than investment companies, that may be considered small entities under the Regulatory Flexibility Act.

As discussed in this Release, the rules are intended to more closely align the definition of eligible portfolio company with the purpose that Congress intended when it established BDCs as a source of financing for certain small companies. These companies often need capital for continued development and growth, but may be unable to borrow money through conventional sources or may not have ready access to the public capital markets. The rules would also benefit BDCs, including those that are small entities, by recapturing the types of companies that Congress originally intended to make eligible for BDC investment as part of a BDC's 70 percent basket. We have no reason to expect that those BDCs and companies that are small entities for purposes of the Regulatory Flexibility Act will be disproportionately affected by the rules.

D. Reporting, Recordkeeping and Other Compliance Requirements

The rules do not impose any new reporting or recordkeeping requirements on BDCs or on companies. The rules also do not impose any compliance requirements on companies. They do, however, impose minimal compliance requirements on all BDCs, including small entities. Under Rule 2a–46, a BDC, prior to investing in a company, would need to determine whether the company has a class of securities listed on an Exchange. This information is readily available, and we believe that all BDCs, including those that are small entities, already evaluate similar types of information when considering whether to invest in a company.

Rule 55a–1 permits a BDC to include in its 70 percent basket follow-on investments in a company that met the definition of eligible portfolio company under Rule 2a–46 when the BDC made its initial investment(s), but that does not meet that definition at the time of the follow-on investment. A BDC generally may make follow-on investments under the rule only if, at the time of the follow-on investment, the BDC owns at least 50 percent of (1) the greatest number of equity securities of such company, including securities convertible into or exchangeable for such securities and (2) the greatest amount of certain debt securities of such company held by the BDC at any time during the period when such company was an eligible portfolio company. In addition, the rule requires a BDC that makes such a follow-on investment to be one of the twenty largest holders of record of the company's outstanding voting securities at the time of investment. These requirements are the same requirements set forth in Section 55(a)(1)(B) of the Investment Company Act, the provision that permits a BDC to include in its 70 percent basket certain follow-on investments in companies that were eligible portfolio companies at the time of the BDC's initial investment(s), but that subsequently lost that status because they issued marginable securities. Accordingly, BDCs, including those that are small entities, already make similar types of determinations when considering whether to make follow-on investments in companies that had lost their eligible portfolio company status because they had issued marginable securities.

E. Commission Action to Minimize Adverse Impact on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (1) Establishing different compliance or reporting standards that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying the compliance requirements under the proposed rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities.

Establishing different compliance or reporting requirements for small entities would not be appropriate. As discussed above, the rules do not impose any reporting requirements on BDCs or on companies. In addition, the rules do not impose any compliance requirements on companies. Both Rules 2a–46 and 55a–1, however, do impose some compliance requirements on BDCs that are intended to ensure that BDCs invest primarily in those companies that Congress intended them to invest in when it established BDCs in 1980. These requirements should, however, impose minimum burdens on BDCs. We note that Rule 2a–46 as adopted does not include proposed paragraph (b) in part because of commenters' concerns that the conditions of that provision are unworkable and burdensome.

We also believe that clarifying, consolidating, or simplifying the compliance requirements under the rules for small entities is inappropriate. As discussed above, neither rule imposes any compliance requirements on companies. Although the rules do impose some compliance requirements on BDCs, as discussed above, these requirements, which we believe will

[40] 2004 Proposing Release, *supra* note 1 at Section VII.

[41] 17 CFR 270.0–10.

[42] 17 CFR 230.157; 17 CFR 240.0–10.

impose minimal burdens on BDCs, are designed to insure that BDCs invest primarily in those companies that Congress intended them to invest in when it established BDCs in 1980.

We believe that the use of performance rather than design standards would add unnecessary complexity. The rules are intended to address the impact and the uncertainty as a result of the 1998 amendment to the Federal Reserve Board's margin rules by providing a clear, bright-line, workable test for determining whether a company is an eligible portfolio company. A standard based on performance could be unduly complicated and cause further uncertainty to BDCs, including those that are small entities, when determining whether a company is an eligible portfolio company. Likewise, the use of a performance standard would bring uncertainty to companies, including those that are small entities, in determining whether they meet the definition of eligible portfolio company.

Finally, we believe that it would be inappropriate to exempt small entities from the coverage of the rules. The rules are intended to benefit BDCs and certain companies that qualify as eligible portfolio companies, including those BDCs and other companies that are small entities. These eligible portfolio companies often need capital for continued development and growth. Exempting small entities from all or part of the rules would be contradictory to the purpose of the rules.

VII. Statutory Authority

We are adopting Rules 2a–46 and 55a–1 pursuant to our rulemaking authority under Sections 2(a)(46)(C)(iv), 6(c) and 38(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rules

■ For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 2. Section 270.2a–46 is added to read as follows:

§ 270.2a–46 Certain issuers as eligible portfolio companies.

The term *eligible portfolio company* shall include any issuer that meets the requirements set forth in paragraphs (A) and (B) of section 2(a)(46) of the Act (15 U.S.C. 80a–2(a)(46)(A) and (B)) and that does not have any class of securities listed on a national securities exchange.

■ 3. Section 270.55a–1 is added to read as follows:

§ 270.55a–1 Investment activities of business development companies.

Notwithstanding section 55(a) of the Act (15 U.S.C. 80a–54(a)), a business development company may acquire securities purchased in transactions not involving any public offering from an issuer, or from any person who is an officer or employee of the issuer, if the issuer meets the requirements of sections 2(a)(46)(A) and (B) of the Act (15 U.S.C. 80a–2(a)(46)(A) and (B)), but the issuer is not an eligible portfolio company because it does not meet the requirements of § 270.2a–46, and the business development company meets the requirements of paragraphs (i) and (ii) of section 55(a)(1)(B) of the Act (15 U.S.C. 80a–54(a)(1)(B)(i) and (ii)).

Dated: October 25, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18255 Filed 10–30–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–27539; File No. S7–37–04]

RIN 3235–AJ31

Definition of Eligible Portfolio Company Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Reproposed rule.

SUMMARY: The Commission is reproposing for comment an additional definition of the term ''eligible portfolio company'' under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''). The reproposed rule is intended to more closely align the definition of eligible portfolio company, and the investment activities of business development companies (''BDCs''), with the purpose that Congress intended. The reproposed rule would expand the definition of eligible portfolio company to include certain companies that list their securities on a national securities exchange (''Exchange'').

DATES: Comments should be received on or before January 2, 2007.

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*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–37–04 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 Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–37–04. 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*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or Elizabeth G. Osterman, Assistant Chief Counsel, Office of Chief Counsel, (202) 551–6825, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5030.

SUPPLEMENTARY INFORMATION: The Commission today is reproposing Rule 2a–46(b) [17 CFR 270.2a–46] under the Investment Company Act [15 U.S.C. 80a *et seq.*].[1]

Table of Contents

I. Background
II. Discussion
A. Comments Received on 2004 Proposing Release
B. Reproposed Rule 2a–46(b)
1. Size-Based Standard
2. Alternative Proposals
(a) $75 Million Public Float (Alternative One)
(b) $150/$250 Million Market Capitalization (Alternative Two)
3. Solicitation of Comments
III. General Request for Comment
IV. Cost-Benefit Analysis
A. Benefits
B. Costs
C. Request for Comments
V. Consideration of Promotion of Efficiency, Competition and Capital Formation
VI. Paperwork Reduction Act
VII. Initial Regulatory Flexibility Analysis
A. Reasons for the Proposed Action
B. Objectives of the Proposed Action
C. Small Entities Subject to the Rule
D. Reporting, Recordkeeping and Other Compliance Requirements
E. Duplicative, Overlapping or Conflicting Federal Rules
F. Significant Alternatives
G. Solicitation of Comments
VIII. Statutory Authority

I. Background

BDCs are closed-end investment companies that Congress established for the purpose of making capital more readily available to certain types of companies.[2] To accomplish this purpose, the Investment Company Act prohibits a BDC from making any investment unless, at the time of the investment, at least 70 percent of its total assets (''70% basket'') are invested in securities of certain specific types of companies, including ''eligible portfolio companies.''[3]

The Investment Company Act defines eligible portfolio company to include domestic operating companies that, among other things, do not have any class of securities that are marginable under rules promulgated by the Federal Reserve Board.[4] In 1998, for reasons unrelated to small business capital formation, the Federal Reserve Board amended its definition of margin security to increase the types of securities that would fall within that definition under its rules. This amendment had the result of reducing the number of companies that qualify as eligible portfolio companies.

In November 2004, the Commission proposed Rule 2a–46[5] and Rule 55a–1

[1] The Commission today issued a release adopting Rule 2a–46, which defines eligible portfolio company as a company whose securities are not listed on an Exchange, and Rule 55a–1, which conditionally permits BDCs to make additional (follow-on) investments in certain companies. Definition of Eligible Portfolio Company under the Investment Company Act of 1940, Investment Company Act Release No. 27538 (Oct. 25, 2006) (''Adopting Release'').

[2] Small Business Investment Incentive Act of 1980, Pub. L. No. 96–477, 94th Stat. 2274 (1980) (codified at scattered sections of the United States Code) (''SBIIA''). *See also generally* H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21 (1980) (''House Report'').

[3] *See* Section 2(a)(46) of the Investment Company Act (statutory definition of eligible portfolio company) [15 U.S.C. 80a–2(a)(46)]. *See also* Section 55(a) of the Investment Company Act (regulating the activities of BDCs) [15 U.S.C. 80a–54(a)].

[4] Section 2(a)(46)(C)(i) of the Investment Company Act. *See also* Section 2(a)(46)(C)(ii) (defines eligible portfolio company to include companies that are controlled by the investing BDC or certain of its affiliates); Section 2(a)(46)(C)(iii) (defines eligible portfolio company to include certain very small companies).

[5] Under Section 2(a)(46)(C)(iv), the term eligible portfolio company includes any issuer that, in addition to meeting the requirements of Sections 2(a)(46)(A) and (B), ''meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of [the Act].'' *See* House Report at 23 (''* * * the Commission is given rulemaking authority to expand the class of eligible portfolio companies, following certain specific standards.''). The legislative history of the SBIIA also makes clear that the intent of this provision ''is to enable the Commission through the administrative process to broaden, if appropriate, the category of eligible portfolio company.'' While stating that BDCs ''already have substantial freedom of action to purchase securities of companies which are not eligible portfolio companies,'' referring to the investments permitted to be made outside of the 70% basket, Congress also noted its expectation that ''the Commission would institute [rulemaking] proceedings to consider whether the definition of eligible portfolio company can be expanded, consistent with the purpose of the legislation, to increase the flow of capital to small, developing businesses or financially troubled businesses. In providing the Commission with rulemaking authority, Congress noted ''[a]mong the objective factors which the Commission may consider in [rulemaking] proceedings are the size of such

Continued

to address the impact of the Federal Reserve Board's 1998 amendments on the definition of eligible portfolio company.[6] As proposed, Rule 2a–46(a) would have defined eligible portfolio company to include any domestic operating company[7] that does not have a class of securities listed on an Exchange;[8] and Rule 2a–46(b) would have defined eligible portfolio company to include any domestic operating company that has a class of securities listed on an Exchange, but is in danger of having its securities delisted because of financial difficulties. As proposed, Rule 55a–1 would have conditionally permitted a BDC to continue to invest in a company that had met the proposed definition of eligible portfolio company at the time of the BDC's initial investment(s) in it, but did not subsequently meet that definition.

Today, the Commission adopted Rule 2a–46, initially proposed as Rule 2a–46(a), and Rule 55a–1.[9] The Commission did not adopt proposed Rule 2a–46(b) based on commenters' concerns that the proposed rule would be unworkable and too narrow.

II. Discussion

A. Comments Received on 2004 Proposing Release

We received thirty-six comment letters that addressed the proposed rules.[10] Most commenters argued that proposed Rule 2a–46(b), which would have defined eligible portfolio company to include domestic operating companies whose securities were listed on an Exchange but were in danger of being delisted because of financial difficulties, would be unworkable.[11] Some commenters also argued that the proposed rule would be too narrow because it would not include some small companies that list their securities on an Exchange, but that nevertheless may have difficulties accessing conventional sources of capital and raising additional capital on the public capital markets. They argued that these companies should qualify as eligible portfolio companies under the rule.[12] Many commenters urged us to adopt a size-based standard and suggested a specific numeric threshold.[13]

B. Reproposed Rule 2a–46(b)

After considering the comments received, the Commission believes that it is appropriate to seek further input on including additional companies in the definition of eligible portfolio company. Accordingly, the Commission is revising and reproposing Rule 2a–46(b) to provide an additional definition of eligible portfolio company.[14] We have included two alternatives of reproposed Rule 2a–46(b) for comment. Each alternative would include certain domestic, operating companies that list their securities on an Exchange.[15] The first alternative would include companies whose public float is less than $75 million (''Alternative One'').[16] The second alternative (two versions) would include companies whose market capitalization is less than either $150 million or $250 million (''Alternative Two'').

Under both alternatives, a company's size would be calculated using the price at which the company's common equity was last sold, or the average of the bid and asked prices of the company's common equity, in the principal market for such common equity on any day in the 60-day period immediately before the BDC's acquisition of its securities.[17] This provision is similar to the methodology used in current Commission rules that differentiate among companies based on their size,[18] and is intended to reduce regulatory complexity.

We discuss the use of a size-based standard and each of the alternatives below.

1. Size-Based Standard

In the 2004 Proposing Release, we questioned whether a size-based standard could: (1) Result in a company's eligible portfolio company status fluctuating frequently as a result of market and economic conditions; (2) allow a company to manipulate its capital structure to fall below a specified level; and (3) introduce regulatory arbitrage by encouraging

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companies, the extent of their public ownership, and their operating history as going concerns and public companies.''). *See* House Report at 31.

[6] The rules were proposed in Definition of Eligible Portfolio Company under the Investment Company Act of 1940, Investment Company Act Release No. 26647 (Nov. 1, 2004) [69 FR 64815 (Nov. 8, 2004)] (''2004 Proposing Release'').

[7] The proposed rule would have incorporated the provisions of Section 2(a)(46)(A) and (B). Section 2(a)(46)(A) of the Investment Company Act defines eligible portfolio company to include (among other things) companies organized under the laws of, and with their principal business in, one or more states of the United States. Section 2(a)(46)(B) of the Investment Company Act generally excludes from the definition of eligible portfolio company any company that meets the definition of investment company under Section 3 of the Investment Company Act, or that is excluded from the definition of investment company by Section 3(c) of that Act, but includes as an eligible portfolio company a small BDC that is licensed by the Small Business Administration and that is a wholly-owned subsidiary of a BDC.

[8] The rule as proposed also would have defined eligible portfolio company to include any domestic operating company that does not have any class of securities listed on an automated interdealer quotation system of a national securities association (*i.e.*, The NASDAQ Stock Market LLC) (''Nasdaq''). On August 1, 2006, Nasdaq began operating as a national securities exchange registered under Section 6(a) of the Exchange Act. *See www.nasdaq.com/newsroom/news/pr2006/ne_section06_097.stm.*

[9] *See supra* note 1.

[10] Commenters included members of Congress, BDCs, law firms, trade associations and small businesses that had received financing from a BDC. The comment letters are available for inspection in the Commission's Public Reference Room at 100 F Street, NE., Washington, DC 20549 (File No. S7–37–04). They also may be viewed at *http://www.sec.gov/rules/proposed/ic-26647.htm.*

[11] *See, e.g.*, comments of Shearman & Sterling LLP (Jan. 7, 2005) (''* * * we believe that the requirement for a delisting notice would frustrate one of the purposes of proposed Rule 2a–46(b), which as expressed in the proposing release, seeks to address the need of, and provide access to capital readily to, financially troubled issuers that have not reached the dire financial straits contemplated by Section 55(a)(3) of the 1940 Act. In our experience, the delisting process often lags the 'facts on the ground,' and properly so, as Exchanges are reluctant to impose a premature death sentence on listed companies. Thus, we submit that a company that receives a delisting notice would likely be in severe financial distress.''); comments of American Capital Strategies Ltd. (Jan. 7, 2005) (generally arguing that the minimum initial listing standards of an Exchange would exclude many of the companies Congress intended to benefit from BDC financing, and noting that the requirement for a delisting notice ''could result in substantially the same situation as was caused by the Federal Reserve Board changes to the margin securities regulations'').

[12] *See, e.g.*, comments of Allied Capital (Jan. 7, 2005); comments of UTEK (Jan. 7, 2005). But see comments of the Committee on Federal Regulation of Securities of the Business Law Section of the American Bar Association (Jan. 5, 2005) (supporting proposal in full); comments of the Investment Company Institute (Jan. 6, 2005) (supporting proposal in full).

[13] *See, e.g.*, comments of Capital Southwest Corporation (Dec. 28, 2004); comments of Representative Sue Kelly and Representative Nydia Velázquez (Jan. 5, 2005); comments of Shearman & Sterling LLP (Jan. 7, 2005); comments of UTEK (Jan. 7, 2005); comments of Allied Capital (Jan. 7, 2005); comments of Williams & Jensen (Feb. 17, 2006).

[14] We are also proposing to renumber Rule 2a–46 as Rule 2a–46(a). We are not proposing any other changes to that rule.

[15] Like Section 2(a)(46) and proposed Rule 2a–46, reproposed Rule 2a–46(b) would define eligible portfolio company to include only domestic operating companies. *See supra* note 7.

[16] Public float is the aggregate market value of a company's outstanding voting and non-voting common equity (*i.e.*, a company's market capitalization) minus the aggregate market value of common equity held by the company's affiliates. *See, e.g.*, Simplification of Registration Procedures for Primary Securities Offerings, Securities Act Release No. 6964 (Oct. 22, 1992) [57 Fed. Reg. 48970 (Oct. 29, 1992)]. Rule 2a–46(b)(2) would define the term ''affiliate'' for purposes of Alternative One by reference to the definition of the same term in Rule 405 under the Securities Act of 1933 (''Securities Act'') [17 CFR 230.405].

[17] Reproposed Rule 2a–46(b)(1). Reproposed Rule 2a–46(b)(2) would define the term ''common equity'' for purposes of Rule 2a–46(b) by reference to the definition of the same term in Rule 405 under the Securities Act.

[18] *See* Form S–3 [17 CFR 239.13]; Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) [67 FR 44722 (Aug. 3, 2005)] (''Securities Offering Reform'').

registered closed-end funds to elect BDC status so that they could have the benefit of the lighter regulatory burdens applicable to BDCs under the Investment Company Act. We also noted that it was unclear what level of market capitalization would be appropriate to define an eligible portfolio company.[19]

After careful review, we have reconsidered our initial concerns about using a size-based standard and believe that these concerns may be addressed. First, we have addressed our concern that a company's eligible portfolio company status may fluctuate based on market conditions by proposing, in both Alternative One and Alternative Two of Rule 2a–46(b), that the size would be computed using the price at which the company's common equity was last sold, or the average of the bid and asked prices of the company's common equity, in the principal market for such common equity, determined as of a single date within 60 days immediately prior to a BDC's acquisition of the company's securities. Second, permitting a company to meet the size-based standard on a single date within the 60-day period immediately prior to a BDC's acquisition of the company's securities also lessens our concern that a company might manipulate its capital structure to meet that standard. Third, with respect to our regulatory arbitrage concern, based upon further evaluation of the differences between registered closed-end funds and BDCs, we believe that most closed-end funds probably would not elect BDC status merely because of the different regulatory framework. Unlike BDCs, most closed-end funds are not structured so as to be able to offer managerial assistance to their portfolio companies. In addition, we believe that most closed-end funds probably would not choose a regulatory framework that would cause them to forego some investment flexibility by requiring them to invest a large percentage of their assets in privately negotiated transactions. One commenter also noted that a closed-end fund would be unlikely to elect BDC status ''unless it was committed to the BDC mission to finance small and developing companies'' because of certain regulatory requirements to which BDCs, but not closed-end funds, currently are subject.[20] Finally, based on our review of the comments, we believe that a size-based standard would provide a bright-line test that is easy to administer.

2. Alternative Proposals

As one commenter pointed out, there is no single standard that precisely defines the types of companies that could benefit from BDC financing.[21] After carefully considering the comments on the original proposal and with this in mind, we are proposing the following two alternatives of Rule 2a–46(b) that we believe are consistent with the purpose Congress intended. In addition, as noted above, we have addressed the concerns we originally had regarding the use of a size-based standard.

(a) $75 Million Public Float (Alternative One)

Alternative One would define eligible portfolio company to include companies whose securities are listed on an Exchange and have a public float of less than $75 million.[22] Alternative One incorporates the size-based standard used in Form S–3 and Rule 12b–2 under the Exchange Act.[23] We have used this standard to delineate between small, unseasoned companies, and larger, seasoned companies whose securities are listed on an Exchange.[24] For example, to register a primary securities offering for cash on Form S–3, a company must have public float of at least $75 million.[25] Companies that meet the eligibility requirements of Form S–3 are mature enough to be able to take advantage of short-form registration, including the resultant benefits of incorporation by reference and quick access to the capital markets through ''shelf registration.'' Similarly, under Rule 12b–2 under the Exchange Act, a company with $75 million public float or more would be an ''accelerated filer,'' and thus be required to meet accelerated deadlines in filing certain Exchange Act reports.[26]

We believe that Alternative One would capture companies that Congress intended to benefit from BDC financing. In this regard, the Commission's Office of Economic Analysis (''OEA'') estimates that, based on June 2006 data, Alternative One would increase the percentage of public domestic operating companies that would meet the definition of eligible portfolio company by 9.1 percent (a total of 896 companies). OEA's calculations relating to public float are based, for the most part, on a public float definition that is similar to the definition of public float used for purposes of Form S–3 and is included in Alternative One.[27] New

[19] *See* 2004 Proposing Release, *supra* note 6 at nn. 34–36 and accompanying text.

[20] Comments of Allied Capital (Jan. 7, 2005). *See also* comments of UTEK (Jan. 7, 2005). These commenters noted compliance costs related to the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002), and reporting obligations under the Exchange Act, as some of the regulatory burdens that might act to deter a closed-end fund that has no reason to elect BDC status, other than an interest in a different regulatory framework, from seeking to elect that status.

[21] Comments of Allied Capital (Jan. 7, 2005).

[22] Reproposed Rule 2a–46(b).

[23] Alternative One, while based on the requirements of Form S–3 and Rule 12b–2, does not incorporate any of the reporting requirements found in those rules out of concern that doing so could capture some companies that may not qualify to use Form S–3 or be considered an accelerated filer only because they were not in compliance with the reporting requirements. We are soliciting comments on this concern.

[24] Under recently adopted rules, an ''unseasoned issuer'' is defined as a company that is required to file reports under Section 13 or Section 15(d) of the Exchange Act [15 U.S.C. 78m or 78*o*(d)], but does not satisfy the requirements of Form S–3 for a primary offering of its securities; a ''seasoned issuer'' is defined as a company that is eligible to use Form S–3 for a primary offering of securities; and a ''well-known seasoned issuer'' is defined to include a company that, among other things, has at least $700 million public float. Securities Offering Reform, *supra* note 18.

[25] In addition to having public float of at least $75 million, a company is eligible to use Form S–3 to register a primary offering of its securities for cash if it: (1) is organized under the laws of the United States or any state and has its principal business operations in the United States; (2) has a class of securities registered under Section 12(b) or a class of equity securities registered under Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(b) or (g)], or is required to file periodic reports under Section 15(d) of the Exchange Act [15 U.S.C. 78*o*(d)]; (3) has been subject to the requirements of Section 12 or Section 15(d) of the Exchange Act and has filed in a timely manner all of the material required to be filed under Sections 13, 14 or 15(d) of the Exchange Act for at least one year [15 U.S.C. 78m, 78n or 78*o*(d)]; and (4) has not failed to pay a dividend or sinking fund installment on preferred stock or defaulted on certain specified obligations since the end of the last fiscal year.

[26] Accelerated filers, in addition to having a public float of $75 million or more, are companies that meet the following conditions as of the end of their fiscal year: (1) they have been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months; (2) they previously have filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and (3) they are not eligible to use Forms 10–KSB and 10–QSB [17 CFR 249.310(b) and 17 CFR 249.308(b)]. *See* Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web site Access to Reports, Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480 (Sept. 16, 2002)].

[27] OEA relied on the estimate of public float provided by Bloomberg LLP in calculating the estimates used in this Release. Bloomberg defines public float as the number of shares outstanding less shares held by insiders and those deemed to be ''stagnant shareholders.'' ''Stagnant shareholders'' include ESOPs, ESOTs, QUESTs, employee benefit trusts, corporations not actively engaged in managing money, venture capital companies and shares held by governments. Bloomberg provides estimates of public float for 3,471 out of 3,804 (91%) of the domestic operating companies identified. For the 333 companies for which OEA was unable to obtain an estimate of public float, OEA used each company's market capitalization. Since small public companies often have a high percentage of insider investors, using market capitalization most likely results in a number that underestimates the number of

Continued

Rule 2a–46, based on June 2006 data, includes approximately 61.4 percent of public domestic operating companies (a total of 6,041 companies).[28] Thus, approximately 70.5 percent (6,937/9,845) of existing domestic public operating companies could qualify as eligible portfolio companies under new Rule 2a–46 and Alternative One of reproposed Rule 2a–46(b).[29]

We note that Alternative One is similar to a suggestion made by one commenter, a BDC.[30] This commenter suggested that we define eligible portfolio company to include public companies that have market capitalization of less than $100 million to ensure that BDCs continue to invest most of their assets in smaller companies.[31]

Finally, we note that Congress intended that we consider a number of factors in engaging in any rulemaking to define eligible portfolio company, including the extent of companies' public ownership.[32] We have considered this factor in proposing Alternative One, which, by using public float, excludes insider ownership of a company.[33] Nevertheless, as discussed below, we are also soliciting comment on using a market capitalization test.

(b) $150/$250 Million Market Capitalization (Alternative Two)

Alternative Two would define eligible portfolio company to include companies that have securities listed on an Exchange based on their market capitalizations. As discussed below, we propose two ceilings under this alternative—$150 million market capitalization and $250 million market capitalization.[34]

We solicited comment on the possibility of using a market capitalization standard in the 2004 Proposing Release. Many commenters urged us to adopt a numeric threshold based on market capitalization.[35] Some commenters noted that companies with market capitalization up to $300 million generally are followed by fewer analysts, have lower institutional ownership and have lower trading volume than companies at higher levels of market capitalization.[36] These commenters concluded that such companies have difficulty accessing the public capital markets. We recognize that, at some level of market capitalization, there may be a difference in public awareness of a company as measured by analyst coverage, institutional ownership and other factors that may be related to the company's ability to attract capital.[37]

In addition, we note that many investment companies classify themselves with reference to the size of the companies in which they invest.[38] Similar size-based classifications also are often used by market participants. These classifications generally assist investors in making their investment choices. In particular, we note the general use of the term ''microcap'' to identify some small, public companies. This classification typically refers to companies with market capitalization of less than $150 million to less than $300 million.[39] Microcap issuers often include, among others, small start-up companies.[40]

We believe that market-based classifications are useful to consider in designing a standard to define the type of company that could benefit from BDC financing. Nevertheless, we note that market participants use different bases to determine these classifications. Accordingly, we are proposing for comment two different market capitalization ceilings. The first ceiling would define an eligible portfolio company to include companies that have securities listed on an Exchange that have less than $150 million market capitalization. This is similar to the classification that some market participants use to identify some small, public companies.[41] The second ceiling would define an eligible portfolio company to include companies that have securities listed on an Exchange that have less than $250 million market capitalization. This ceiling mirrors legislation proposed last year[42] and is

companies that have a public float of less than $75 million.

[28] *See* Adopting Release, *supra* note 1 at text following n.17.

[29] We note that our estimates reflect only those companies with less than $75 million public float whose securities are listed on Nasdaq, the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex''). The estimates do not reflect those companies whose securities are exclusively listed on a regional exchange (*i.e.*, those companies whose securities are not dually listed on the NYSE, the Amex or Nasdaq) because such information is not available on our primary data source. While there are only a limited number of these companies, we believe that most of them have a public float of less than $75 million and thus would also be eligible portfolio companies under either of the proposed alternatives of Rule 2a–46(b).

[30] Comments of Capital Southwest Corporation (Dec. 28, 2004).

[31] We estimate that there is little difference between the number of companies that would be included under the standard proposed under Alternative One and a standard using $100 million market capitalization. OEA estimates that approximately 918 public domestic operating companies would be included under a $100 million market capitalization standard, compared to 896 public domestic operating companies that would be included under a $75 million public float standard (a difference of 22 companies).

[32] *See supra* note 5.

[33] *See supra* note 16.

[34] Reproposed Rule 2a–46(b).

[35] *Supra* note 13.

[36] Comments of Representatives Sue Kelly and Nydia Velázquez at n.12 (Jan. 5, 2005); comments of Williams & Jensen (Feb. 17, 2006). These commenters referred to analysis prepared by OEA in connection with Securities Offering Reform. *See* memorandum dated December 3, 2004 (''OEA Memorandum'') attached to comments of Williams & Jensen (Feb. 17, 2006) (exhibit entitled ''SEC Data Demonstrates Lack of Market Following for Companies with Market Capitalizations of $300 million or less''). We note that OEA prepared this memorandum to support differentiating among public companies for purposes of defining well-known seasoned issuers. *See supra* note 24. Also, the OEA Memorandum does not exclude foreign companies and certain domestic, financial companies. *See* Sections 2(a)(46)(A) and (B), *supra,* note 5. The set of companies discussed in that memorandum therefore is not directly comparable to the set of companies that might be defined as eligible portfolio companies under Rule 2a–46 and proposed Rule 2a–46(b). *See also* comments of Allied Capital (Jan. 7, 2005) (data compiled by Banc of America Securities LLC at Appendix A used to make similar point); comments of UTEK (Jan. 7, 2005) (general statement of similar point).

[37] *See* Background Statistics: Market Capitalization & Revenue of Public Companies, August 1, 2005 revision, prepared by OEA and included at Appendix I of Exposure Draft of Final Report of Advisory Committee on Smaller Public Companies, Securities Act Release No. 8666 (modified Mar. 15, 2006), available at *www.sec.gov/rules/other/33-8666.pdf.* This data does not exclude foreign companies and certain domestic, financial companies. Like the set of companies discussed in the OEA Memorandum, it therefore is not directly comparable to the set of companies that might be defined as eligible portfolio companies under Rule 2a–46 and proposed Rule 2a–46(b). *See* Sections 2(a)(46)(A) and (B), *supra,* note 5.

[38] *See, e.g., http://biz.yahoo.com/funds/sm_mf2.html.*

[39] There is no one generally accepted definition of microcap issuer. Morgan Stanley and the Motley Fool define a microcap issuer to be issuers with market capitalizations of less than $150 million. *See e.g., http://www.fool.com/school/glossary/glossaryc.htm; http://www.morganstanleyindividual.com/customerservice/dictionary.* Yahoo generally refers to microcap funds as funds that invest in companies with less than $250 million. *Supra* note 38. *See also http://www.investorwords.com/3050/micro_cap.html* (microcap companies include those companies with market capitalization of under $250 million). Lipper Inc. defines microcap funds as those funds that invest primarily in companies with market capitalization less than $300 million at the time of purchase. Lipper, U.S. Open-End, Closed-End, Variable Annuity, and Overseas Fund Classifications Descriptions (Version 1.2, updated: April 11, 2006), available at *www.Lipperweb.com.*

[40] Some larger, more established public companies, in addition to small, start-up public companies, would qualify as eligible portfolio companies under Alternative Two. We note that certain larger companies were historically included under the definition of eligible portfolio company before 1998. *See* 2004 Proposing Release, *supra* note 6.

[41] *See supra* note 39.

[42] The ''Increased Capital Access for Growing Business Act'' was passed by the House of Representatives on April 6, 2005. H.R. 436, 109th Cong., 1st Sess. (2005) (previously H.R. 3170); S. 1396, 109th Cong., 1st Sess. (2005) (mirrors H.R. 436). Both H.R. 436 and S. 1396 currently are pending before the Senate Committee on Banking, Housing and Urban Affairs.

also similar to the classification that other market participants use to identify some small, public companies.[43]

OEA estimates that based on June 2006 data, Alternative Two would increase the percentage of public domestic operating companies that would meet the definition of eligible portfolio company. A ceiling of $150 million market capitalization would increase the percentage of eligible portfolio companies by 11.8 percent (a total of 1,168 companies). Since new Rule 2a–46, based on June 2006 data, includes approximately 61.4 percent of public domestic operating companies (a total of 6,041 companies), approximately 73.2 percent (7,209/9,845) of existing domestic public operating companies could qualify as eligible portfolio companies under the combination of the two provisions. A ceiling of $250 million market capitalization would increase the percentage of eligible portfolio companies by 16 percent (a total of 1,562 companies), for a total of approximately 77.2 percent (7,603/9,845) of existing domestic public operating companies under the combination of new Rule 2a–46 and this version of Alternative Two.

3. Solicitation of Comments

We are requesting comment on whether Alternative One, one of the two versions of Alternative Two, or another alternative not discussed in this Release, would accomplish the objective of more closely aligning the definition of eligible portfolio company with the purpose that Congress intended. We are particularly interested in comments from small businesses with respect to the impact that the alternatives (Alternative One and both versions of Alternative Two) may have on them. We are also interested in receiving information about small businesses' experiences relating to their ability to raise capital through securities offerings or to borrow money through conventional sources (*e.g.*, banks).

We specifically request comment on the following points:

• Please provide your view as to whether Alternative One or one of the two versions of Alternative Two more closely aligns the definition of eligible portfolio company with the purpose that Congress intended. Do any of the proposals (Alternative One or one of the two versions of Alternative Two) better expand the definition of eligible portfolio company consistent with the purpose of SBIIA? Please provide empirical and analytical evidence that supports your response. If you believe that none of the proposals meets the objective of expanding the definition consistent with the purpose of SBIIA, please provide us with another suggestion that meets this objective, with supporting empirical and analytical evidence. In particular, please comment on whether the ceiling in any suggestion should be lower or higher than those included in the proposals. Please also comment on whether it is more appropriate to use a standard based on public float or market capitalization. For example:

○ Alternative One mirrors the standard used in Form S–3 and Rule 12b–2 of $75 million public float. Would it be more appropriate to use a lower ceiling based on Regulation S–B under the Securities Act of 1933 and the Exchange Act, which defines a ''small business issuer'' as, among other things, an issuer that has revenues of less than $25 million, but would not include an issuer that has public float of $25 million or more?

○ Would a ceiling other than the one included under Alternative One or one of the two versions of Alternative Two, or another ceiling not discussed in this Release, be a better way of achieving our objective of more closely aligning the definition of eligible portfolio company with Congress's intent? For example, one commenter suggested a ceiling of $300 million market capitalization based on its analysis of companies that have difficulty accessing capital.[44]

○ We are particularly mindful of the unique position of BDCs as regulated investment companies under the Investment Company Act. Congress amended the Investment Company Act in recognition of the differences between BDCs and other investment companies, and the ''valuable function in the capital formation process'' that BDCs provide.[45] In enacting these amendments, Congress was careful to balance investor protections against the benefits of increasing the flow of public capital to certain companies.[46] One commenter expressed its concern that a high size-based standard could result in BDCs focusing their investment activities on larger companies to the detriment of the companies that BDCs were intended to help.[47] We solicit comment on this concern. We also request comment on whether either of the proposed alternatives, or a different alternative, would have a negative impact on BDC investors.

○ Congress noted that we may consider a number of factors in adopting rules to define eligible portfolio company, including the extent of companies' public ownership.[48] We have used public float (which excludes insider ownership of a company[49]) as the basis for Alternative One. We have used market capitalization (which includes all public ownership, including insiders' interests) as the basis for Alternative Two. Please comment on which standard (public float or market capitalization) you believe more closely aligns the definition of eligible portfolio company with Congress's purpose.

○ We understand that it is more difficult to obtain a company's public float from reliable third-party sources than it would be to obtain a company's market capitalization, which is readily available through such sources.[50] Although public float information is not readily available through third-party sources, we expect that the costs involved in a BDC complying with these requirements would be minimal. Section 55 of the Investment Company Act generally requires a BDC to invest in eligible portfolio companies through privately negotiated transactions, and we anticipate that a BDC would be able to obtain this information from the company during the course of those

This ceiling is also consistent with some commenters' suggestions. *See* comments of Williams & Jensen (Feb. 17, 2006) (''The $250 million market capitalization level included in the legislation is consistent with the original Congressional intent.''). *See also* comments of Representatives Sue Kelly and Nydia Velázquez (Jan. 5, 2005); comments of UTEK (Jan. 7, 2005); comments of Allied Capital (Jan. 7, 2005); comments of American Capital (Jan. 7, 2005); comments of Representative Michael Oxley, Representative Richard Baker and Representative Sue Kelly (Nov. 15, 2005); comments of Chamber of Commerce of the United States of America (Dec. 13, 2005); comments of Senator Charles Schumer and Senator Robert Menendez (Apr. 24, 2006).

[43] *See supra* note 39.

[44] Comments of Williams & Jensen (Feb. 17, 2006).

[45] House Report at 21. *See* Section I, 2004 Proposing Release, *supra* note 6.

[46] House Report at 22 (''the Committee is cognizant of the need to avoid compromising needed protection for investors in the name of reducing regulatory burdens. * * * Consequently, [SBIIA] is intended to preserve to the fullest possible extent [the application of investor protections of the federal securities laws to BDCs and their operators], while at the same time reducing unnecessary regulatory burdens.''). *See* 2004 Proposing Release, *supra* note 6 at n.4 and accompanying text (discussing regulatory flexibility given to BDCs).

[47] *See* supra notes 30–31and accompanying text. *See also* comments of Investment Company Institute (Jan. 6, 2005).

[48] *See supra* note 5.

[49] *See supra* note 16.

[50] Although companies required to file reports with us under the Exchange Act are required to disclose their public float on the cover page of Form 10–K [17 CFR 249.310], that information may be outdated at the time a BDC seeks to invest in that company.

negotiations.[51] Are these assumptions accurate, or would it be burdensome for a BDC to determine a company's eligible portfolio company status if it is based on public float rather than market capitalization?

• Unlike Form S–3 and Rule 12b–2, Alternative One of reproposed Rule 2a–46(b) does not incorporate any of the qualifying requirements included in Form S–3 or Rule 12b–2 based on the issuer's reporting history under the Exchange Act out of concern that doing so could capture some larger companies that may not qualify to use Form S–3, or be considered accelerated filers, solely because they had not complied with the respective regulation's reporting requirements (*e.g.*, company missed deadlines because of auditing issues). We solicit comment on this concern. Should such reporting requirements be included in the definition of eligible portfolio company under Alternative One? In other words, to the extent that you believe Alternative One is an appropriate standard, should it exclude a company from the definition of eligible portfolio company because the company cannot meet all of the eligibility requirements for use of Form S–3 or because it does not meet the definition of accelerated filer under Rule 12b–2?

• We are proposing that a company must only meet the standard on a single date within the 60-day period immediately prior to the BDC's acquisition of the company's securities for purposes of determining its status as an eligible portfolio company under the reproposed definition. Is this timing appropriate? Should a company be required to meet the standard for more than one day during the 60-day period (*e.g.*, at least for 5, 10, 20 non-consecutive days within the 60-day period, or an average over a specified period of time)? Should the requirement be that a company must meet the size-based standard using the average of the 60-day period immediately before an acquisition by a BDC? Is the 60-day period appropriate? Would a shorter or longer time period (*e.g.*, 30 days, 75 days), or an average over a specified period of time, be more appropriate? In your response, please explain why your alternative would be more appropriate than the 60-day period that we are proposing.

• The 2004 Proposing Release was intended to address the need of financially troubled companies that are at risk of losing their listing status to access BDC capital, as well as small, developing companies.[52] One commenter indicated that proposed Rule 2a–46(b) would not include all of the financially troubled companies that provision was intended to include—that is, companies that have a class of securities listed on an Exchange, but that are in danger of having their securities delisted because they no longer meet the relevant Exchange's quantitative requirements for continued listing on that Exchange and that do not satisfy an Exchange's initial quantitative requirements for listing any class of their securities.[53] We believe that many of such companies would meet the size-based criteria specified under either alternative of reproposed Rule 2a–46(b), and therefore be included under the reproposed definition. In addition, such companies might be permissible investments for BDCs to make under Section 55(a)(3), which permits a BDC to include in its 70 percent basket securities of a company purchased from the company or certain affiliates of the company in specific situations demonstrating financial distress, including bankruptcy proceedings. Nevertheless, we request comment as to whether there are some financially troubled companies that could benefit from BDC financing but would not meet the definition of eligible portfolio company under Alternative One or Alternative Two of reproposed Rule 2a–46(b). If you believe that there are, we request comment on how such companies could be defined. For example, should the definition be based on a company's failure to meet one or more initial or continuing quantitative listing standards of any Exchange for a certain period of time? If yes, which quantitative listing standard(s) would be appropriate on which to base eligibility? How long must a company be out of compliance with the quantitative listing standard(s) before it would meet the definition?

III. General Request for Comment

We request comment on reproposed Rule 2a–46(b) and on other matters that might have an effect on our proposal. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also request information regarding the potential impact of reproposed Rule 2a–46(b) on the economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. In the Proposing Release we requested public comment and specific data regarding the costs and benefits of reproposed Rule 2a–46(b). While commenters agreed that proposed Rule 2a–46 would benefit some companies, most urged the Commission to modify the proposed rule to expand the definition to include more companies.

A. Benefits

Both Alternative One and Alternative Two of the expanded definition of eligible portfolio company are designed to benefit many of the companies that may have lost their eligible portfolio company status because of the 1998 changes to the Federal Reserve Board's definition of margin stock. Specifically, both alternatives are designed to benefit certain companies by expanding the definition of eligible portfolio company to include any domestic operating company with a class of securities listed on an Exchange that meets the specified size-based standard. Many public companies that would be included under reproposed Rule 2a–46(b) may need capital for continued development and growth, but, notwithstanding that their securities are listed on an Exchange, may find it difficult to raise capital through additional offerings or borrow money through other conventional sources. By including such companies within the definition of eligible portfolio company, those companies and their shareholders would benefit because of the expanded sources of capital from which the companies may seek to obtain financing.

Both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would also benefit BDCs by expanding the universe of investments that BDCs may include as part of their 70 percent basket. In addition, both would benefit BDCs by addressing the uncertainty caused by changes in the margin rules in the operation of BDCs.[54] Industry participants have informed us that the 1998 amendment to the margin rules has substantially reduced the number of issuers which BDCs may include in their 70 percent basket and accordingly has adversely affected their business operations.

OEA estimates that as of June 30, 2006, there were a total of 896 domestic operating companies whose securities

[51] We also understand that the question of whether a company would meet the public float standard would only be at issue if that company has a market capitalization of the dollar amount specified under the standard (*e.g.*, in the case of Alternative One, $75 million) or greater.

[52] *See* 2004 Proposing Release, *supra* note 6 at nn. 37–41 and accompanying text.

[53] Comments of Shearman & Sterling LLP (Jan. 7, 2005).

[54] *See, e.g.*, comment of American Capital Strategies (Jan. 7, 2005).

are listed on Nasdaq, the NYSE and the Amex that have a public float of less than $75 million, and therefore would qualify as eligible portfolio companies under Alternative One. OEA reached this estimate by first calculating the number of companies whose securities were listed on Nasdaq, the NYSE and the Amex (a total of 6,786 companies), corrected for cases where individual companies had multiple classes of securities listed (60 companies), and then removing from the estimate all foreign companies, investment companies and companies that are excluded from the definition of investment company by Section 3(c) of the Investment Company Act (*e.g.*, REITS, banks, insurance companies) because both Section 2(a)(46) of the Investment Company Act and Rule 2a–46 exclude these types of companies from the definition of eligible portfolio company (a deduction of 2,982 companies) to reach a total of 3,804 companies.[55] OEA determined that of these companies, 896 had a public float of less than $75 million.[56] OEA further estimates that Alternative One, together with new Rule 2a–46 (which would be redesignated as Rule 2a–46(a)),[57] would include within the definition of eligible portfolio company 6,937 companies, representing 70.5 percent (6,937/9,845 [58]) of public domestic operating companies.

OEA estimates that there are a total of 1,168 domestic operating companies whose securities are listed on Nasdaq, the NYSE and the Amex that have a market capitalization of less than $150 million,[59] and therefore would qualify as eligible portfolio companies under the $150 million market capitalization standard set forth in Alternative Two.[60] Accordingly, OEA estimates that this standard, together with new Rule 2a–46 (which would be redesignated as Rule 2a–46(a)), would include within the definition of eligible portfolio company 7,209 companies, representing 73.2 percent (7,209/9,845) of public domestic operating companies.[61]

Finally, OEA estimates that there are a total of 1,562 domestic operating companies whose securities are listed on Nasdaq, the NYSE and the Amex that have a market capitalization of less than $250 million,[62] and therefore would qualify as eligible portfolio companies under the $250 million market capitalization standard set forth in Alternative Two.[63] Accordingly, OEA estimates that this standard, together with new Rule 2a–46, would include within the definition of eligible portfolio company 7,603 companies, representing 77.2 percent (7,603/9,845) of public domestic operating companies.[64]

B. Costs

Both Alternative One and Alternative Two of reproposed Rule 2a–46(b) might impose certain administrative compliance costs on BDCs. It is our understanding, however, that these costs are similar to the types of compliance costs that a BDC currently undertakes when it invests in an issuer.

Under Alternative One, a BDC would need to determine, prior to investing in a company, if the company has a class of securities on an Exchange and whether that company's public float was less than $75 million as of a date within 60 days prior to the date of the BDC's investment. Although public float information is not readily available through third-party sources,[65] we expect that the costs involved in a BDC complying with these requirements would be minimal. Section 55 of the Investment Company Act generally requires a BDC to invest in eligible portfolio companies through privately negotiated transactions, and we anticipate that a BDC would be able to obtain this information from the company during the course of those negotiations.

Under the $150 million market capitalization version of Alternative Two, a BDC would need to determine, prior to investing in a company, if the company has a class of securities on an Exchange and whether that company's market capitalization was less than $150 million as of a date within 60 days prior to the date of the BDC's investment. Similarly, under the $250 million market capitalization version of Alternative Two, a BDC would need to determine, prior to investing in a company, if the company has a class of securities on an Exchange and whether that company's market capitalization was less than $250 million as of a date within 60 days prior to the date of the BDC's investment. We expect that the compliance costs on BDCs might be slightly lower under either version of Alternative Two because information about the market capitalization of companies is readily available from third-party sources. Finally, we anticipate that both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would impose only minimal, if any, costs on portfolio companies.

C. Request for Comments

We request comment on the potential costs and benefits identified above and any other costs and benefits that may result from either Alternative One or Alternative Two of reproposed Rule 2a–46(b). Are there any direct or indirect costs that we have not identified? For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the impact of each alternative on the economy on an annual basis. Commenters are requested to provide data to support their views.

[55] As we discussed in the Adopting Release, one commenter argued that the Commission incorrectly calculated the number of companies that the proposed rule would benefit and wrote that the proposal would benefit even fewer companies than the Commission estimated. The commenter's figure is lower than the figure calculated by OEA. It appears that the commenter did not deduct from its calculation foreign companies, investment companies and companies that are excluded from the definition of investment company by Section 3(c). *See* Adopting Release, *supra* note 1 at n.33.

[56] *See supra* note 27.

[57] OEA estimated that, based on June 2006 data, Rule 2a–46 as adopted today includes 6,041 domestic operating companies (61.4% of all domestic operating companies). *See* Adopting Release, *supra* note 1 at Section III.A.

[58] OEA estimates that, as of June 2006, there were 9,845 public domestic operating companies by calculating the number of companies whose securities are listed on Nasdaq, the NYSE and the Amex, in addition to those companies whose securities are trading through the over-the-counter bulletin board and on Pink Sheets LLC, correcting these figures for cases where individual companies had multiple classes of securities listed, and then removing from these figures foreign companies, investment companies, and companies that are excluded from the definition of investment company by Section 3(c).

[59] As with Alternative One, OEA reached this estimate after first calculating the number of companies whose securities are listed on Nasdaq, the NYSE and the Amex, corrected for cases where individual companies had multiple classes of securities listed, and then removing from these figures all foreign companies, investment companies and companies that are excluded from the definition of investment company by Section 3(c) (*e.g.*, REITS, banks, insurance companies) because both Section 2(a)(46) and Rule 2a–46 exclude these types of companies from the definition of eligible portfolio company.

[60] Market capitalization data was obtained from CRSP, Center for Research in Security Prices, Graduate School of Business, The University of Chicago [2006]. Used with permission. All rights reserved. *www.crsp.uchicago.edu.*

[61] *See supra* note 57.

[62] *See supra* note 59.

[63] *See supra* note 60.

[64] *See supra* note 57. OEA's analysis of the number and percentage of companies that could qualify as eligible portfolio companies under Alternative One and the two versions of Alternative Two are based on market capitalization and public float calculated as of a particular day. Because both Alternative One and Alternative Two allow for companies to meet the test on any date within a 60-day period, OEA's figures may underestimate the number of companies that would be eligible under either version.

[65] Although companies required to file reports with us under the Exchange Act are required to disclose their public float on the cover page of Form 10–K [17 CFR 249.310], that information may be outdated at the time a BDC seeks to invest in that company.

V. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[66] In the 2004 Proposing Release, we requested comment on our analysis of the impact of proposed Rule 2a–46 on efficiency, competition and capital formation. As discussed in Section II of this Release, some commenters argued that proposed Rule 2a–46(b) would be too narrow and would not capture all of the companies that could benefit from BDC financing. We interpreted these comments to suggest that capital formation may have been limited under the proposed rule. In addition, one commenter wrote that the proposal failed to identify private investments in public equity (''PIPE'') as one source of competition for BDC financing.[67] The commenter also believed that the proposal failed to consider the impact on the shareholders of companies receiving BDC or PIPE financing.[68]

In light of the comments received, the Commission is reproposing Rule 2a–46(b) to more closely align the definition of eligible portfolio company, and the investment activities of BDCs, with the purpose intended by Congress. Both alternatives of the reproposed definition are designed to promote efficiency, competition and capital formation.

Specifically, efficiency would be enhanced because both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would expand the definition of eligible portfolio company so as to allow BDCs to compete with other entities that provide capital to certain companies. To the extent that BDCs provide capital at lower cost to these companies, the rules promote a more efficient flow of capital, potentially allowing those companies to take on additional or different investment projects. Both alternatives of reproposed Rule 2a–46(b) in our view also would promote efficiency by providing a workable test for determining whether a company is an eligible portfolio company.

We also believe that both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would promote competition. The market for private equity and debt investments can be highly competitive. Since their establishment, BDCs have competed with various sources of capital, including private equity funds, hedge funds, investment banks and other BDCs, to provide financing to certain companies. We believe that both alternatives of the reproposed rule would encourage such competition.[69] In addition, to the extent that BDCs provide either additional or less expensive capital to these companies, those companies may be more competitive in the marketplace.

In response to the commenter's concern that the proposal did not consider the impact on shareholders of companies receiving BDC or PIPE financing, we note that shareholders of companies that had lost their status as eligible portfolio companies would benefit under either version of the reproposed rule because such companies would be able to more readily consider BDCs as a source of financing. We anticipate that these companies would consider both the type of financing offered and the entity offering the financing when determining the type and source of financing that would be in their best interests and the best interests of their shareholders.

Finally, we believe that both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would promote capital formation. BDC investments represent additional capital to companies. Each version would expand the definition of eligible portfolio company. We estimate that a total of 896 public domestic operating companies would qualify as an eligible portfolio company under Alternative One, 1,168 public domestic operating companies would qualify as an eligible portfolio company under the $150 million market capitalization version of Alternative Two, and 1,562 public domestic operating companies would qualify as an eligible portfolio company under the $250 million market capitalization version of Alternative Two.[70]

VI. Paperwork Reduction Act

The Commission has determined that these rules do not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with 5 U.S.C. 603. It relates to reproposed Rule 2a–46(b) under the Investment Company Act. The Commission is proposing two alternatives of an additional definition of eligible portfolio company. Both alternatives would expand the definition of eligible portfolio company to include certain companies whose securities are listed on an Exchange. Alternative One would define eligible portfolio company to include a company whose securities are listed on an Exchange but that has public float of less than $75 million. Alternative Two would define eligible portfolio company to include a company whose securities are listed on an Exchange but has a market capitalization of less than either $150 million or $250 million.

A. Reasons for the Proposed Action

As described in Section I of this Release, the reason for reproposed Rule 2a–46(b) is to further address the unintended impact of the Federal Reserve Board's 1998 amendments to the definition of eligible portfolio company.

B. Objectives of the Proposed Action

As described in Section II of this Release, the Commission today adopted Rule 2a–46 under the Investment Company Act, which defines eligible portfolio company to include all companies whose securities are not listed on an Exchange. Reproposed Rule 2a–46(b) would expand the definition of eligible portfolio company to include certain companies with a class of securities listed on an Exchange. These companies may need BDC financing for continued development and growth,

[66] 15 U.S.C. 80a–2(c).

[67] The commenter explained that entities that provide financing through PIPE transactions include hedge funds and private venture capital funds, both of which compete with BDCs in providing capital in the small business market. The commenter also noted its belief that the use of PIPE transactions illustrates the lack of access to traditional forms of capital for certain public companies. Comments of Williams & Jensen (Feb. 17, 2006).

[68] *Id.*

[69] Williams & Jenson commented that we did not consider PIPE transactions in our discussion in the 2004 Proposing Release of how proposed Rule 2a–46 would promote competition. This argument, however, focuses on one particular type of financing that is used by entities that compete with BDCs in funding small businesses. Neither Rule 2a–46 adopted today, nor reproposed Rule 2a–46(b), however, differentiates among the types of financing that may be offered to eligible portfolio companies. Instead, the rule, as adopted and reproposed, provides a definition of eligible portfolio company that would permit BDCs to invest their 70% baskets without regard to the type of financing offered. Thus, BDCs and eligible portfolio companies would be permitted to negotiate the type of financing (including PIPE transactions) that is most appropriate under the circumstances.

[70] *See supra* notes 55–64 and accompanying text.

but, notwithstanding the fact that their securities are listed on an Exchange, may find it difficult to raise additional capital in new offerings or borrow money through other conventional sources.

C. Small Entities Subject to the Rule

Both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would affect BDCs and companies that qualify as small entities under the Regulatory Flexibility Act. For purposes of the Regulatory Flexibility Act, a BDC is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[71] As of December 2005, there were 87 BDCs, of which 66 were small entities. A company other than an investment company is a small entity under the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.[72] We estimate that there are approximately 2,500 companies, other than investment companies, that may be considered small entities.

As discussed in this Release, reproposed Rule 2a–46(b) is intended to benefit certain companies that need capital for continued development and growth, but may be unable to borrow money through conventional sources despite their securities being listed on an Exchange. Both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would also benefit BDCs, including those that are small entities, by expanding the universe of investments that BDCs may include as part of their 70 percent basket. We have no reason to expect that those BDCs and companies that are small entities for purposes of the Regulatory Flexibility Act would be disproportionately affected by either alternative. We request comment on the effects and costs of both Alternative One and Alternative Two on small entities.

D. Reporting, Recordkeeping and Other Compliance Requirements

Neither Alternative One nor Alternative Two of reproposed Rule 2a–46(b) would impose any new reporting or recordkeeping requirements on BDCs or on companies. They also would impose only minimal, if any, compliance requirements on portfolio companies.

Both Alternative One and Alternative Two of reproposed Rule 2a–46(b), however, would impose minimal compliance requirements on BDCs, including small entities. It is our understanding that these costs are similar to the types of compliance costs that a BDC currently undertakes when it invests in an issuer.

Under Alternative One, a BDC, prior to investing in a company, would need to determine whether the company has a class of securities listed on an Exchange and whether that company's public float was less than $75 million as of a date within 60 days prior to the date of the BDC's investment in the company. Public float information is not readily available through third-party sources. Section 55 of the Investment Company Act, however, generally requires a BDC to invest in eligible portfolio companies through privately negotiated transactions, and so we anticipate that a BDC would be able to obtain this information from the company during the course of these negotiations.

Similarly, we expect that the compliance burden imposed on BDCs, including those that are small entities, would be minimal under either the $150 million market capitalization version of Alternative Two or the $250 million market capitalization version of Alternative Two. Under the $150 million market capitalization version, a BDC would need to determine, prior to investing in a company, if the company has a class of securities on an Exchange and whether that company's market capitalization was less than $150 million as of a date within 60 days prior to the date of the BDC's investment. Similarly, under the $250 million market capitalization version, a BDC would need to determine, prior to investing in a company, if the company has a class of securities on an Exchange and whether that company's market capitalization was less than $250 million as of a date within 60 days prior to the date of the BDC's investment. We expect that the compliance burden imposed on BDCs, including those that are small entities, would be slightly lower under either version of Alternative Two than it would be under Alternative One because information about the market capitalization of companies is readily available from third-party sources.

Finally, we anticipate that both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would impose only minimal, if any, compliance requirements on portfolio companies, including those that are small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap or conflict with either Alternative One or Alternative Two of reproposed Rule 2a–46(b).

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (1) Establishing different compliance or reporting standards that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying the compliance requirements for small entities; (3) the use of performance rather than design standards; and (4) exempting small entities from the coverage of the rules, or any part thereof.

Establishing different compliance or reporting requirements for small entities would not be appropriate under reproposed Rule 2a–46(b). As discussed above, neither Alternative One nor Alternative Two would impose any reporting requirements on BDCs or on companies. In addition, neither of the alternatives would impose any compliance requirements on portfolio companies. Both Alternative One and Alternative Two of reproposed Rule 2a–46(b) would, however, impose some compliance requirements on BDCs that are intended to ensure that BDCs invest primarily in certain types of companies. These requirements should, however, impose only minimal burdens on BDCs.

We believe that clarifying, consolidating or simplifying the compliance requirements for small entities under either alternative would be inappropriate. As discussed above, neither Alternative One nor Alternative Two would impose any compliance requirements on portfolio companies. Although both alternatives of reproposed Rule 2a–46(b) would impose some compliance requirements on BDCs, as discussed above, these requirements, which we believe would impose minimal burdens on BDCs, are designed to ensure that BDCs would invest in companies in accordance with the proposed rule.

We believe that using performance rather than design standards would add unnecessary complexity. Both Alternative One and Alternative Two of reproposed Rule 2a–46(b) provide a clear, bright-line, workable test for determining whether a company is an eligible portfolio company. A standard

[71] 17 CFR 270.0–10.

[72] 17 CFR 230.157; 17 CFR 240.0–10.

based on performance could be unduly complicated and cause further uncertainty to BDCs, including those that are small entities, when determining whether a company is an eligible portfolio company. Likewise, the use of a performance standard would bring uncertainty to companies in determining whether they meet the definition of eligible portfolio company.

Finally, we believe that it would be inappropriate to exempt BDCs that are small entities from the coverage of the reproposed Rule 2a–46(b). Both Alternative One and Alternative Two of reproposed Rule 2a–46(b) should benefit BDCs and companies, including those that are small entities, by expanding the definition of eligible portfolio company to include certain companies whose securities are listed on an Exchange. Exempting BDCs and companies that are small entities from all or part of either proposed alternative would be contradictory to the purpose of this rulemaking.

G. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this IRFA. Comment is specifically requested on the number of small entities that would be affected by Alternative One and each version of Alternative Two and the likely impact on Alternative One and Alternative Two (both versions) on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of reproposed Rule 2a–46(b) and will be reflected in the Final Regulatory Flexibility Analysis.

VIII. Statutory Authority

We are proposing to amend Rule 2a–46 and reproposing Rule 2a–46(b) pursuant to our rulemaking authority under Sections 2(a)(46)(C)(iv) and 38(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Revise § 270.2a–46 to read as follows:

§ 270.2a–46 Certain issuers as eligible portfolio companies.

The term *eligible portfolio company* shall include any issuer that meets the requirements set forth in paragraphs (A) and (B) of section 2(a)(46) of the Act (15 U.S.C. 80a–2(a)(46)(A) and (B)) and that:

(a) Does not have any class of securities listed on a national securities exchange; or

(b) Has a class of securities listed on a national securities exchange, but has an aggregate market value of outstanding voting and non-voting common equity [held by non-affiliates of less than $75 million] [of less than $150 million] [of less than $250 million]. For purposes of this paragraph:

(1) The aggregate market value of an issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of acquisition of its securities by a business development company; and

(2) *Common equity* [has] [and *affiliate* have] the same meaning[s] as in 17 CFR 230.405.

Dated: October 25, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18257 Filed 10–30–06; 8:45 am]

BILLING CODE 8011–01–P

Federal Register

Tuesday,
October 31, 2006

Part VIII

The President

Executive Order 13413—Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo

Notice of October 27, 2006—Continuation of National Emergency Regarding the Proliferation of Weapons of Mass Destruction

Federal Register
Vol. 71, No. 210
Tuesday, October 31, 2006

Presidential Documents

Title 3—

The President

Executive Order 13413 of October 27, 2006

Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, determine that the situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability and was addressed by the United Nations Security Council in Resolution 1596 of April 18, 2005, Resolution 1649 of December 21, 2005, and Resolution 1698 of July 31, 2006, constitutes an unusual and extraordinary threat to the foreign policy of the United States and hereby declare a national emergency to deal with that threat. To address that threat, I hereby order:

Section 1. (a) Except to the extent that section 203(b)(1), (3), and (4) of the IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)) may apply, or to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(A) to be a political or military leader of a foreign armed group operating in the Democratic Republic of the Congo that impedes the disarmament, repatriation, or resettlement of combatants;

(B) to be a political or military leader of a Congolese armed group that impedes the disarmament, demobilization, or reintegration of combatants;

(C) to be a political or military leader recruiting or using children in armed conflict in the Democratic Republic of the Congo in violation of applicable international law;

(D) to have committed serious violations of international law involving the targeting of children in situations of armed conflict in the Democratic Republic of the Congo, including killing and maiming, sexual violence, abduction, and forced displacement;

(E) to have directly or indirectly supplied, sold, or transferred to the Democratic Republic of the Congo, or been the recipient in the territory of the Democratic Republic of the Congo of, arms and related materiel, including military aircraft and equipment, or advice, training, or assistance, including financing and financial assistance, related to military activities;

(F) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in subsections (a)(ii)(A) through (E) of this section or any person listed in or designated pursuant to this order; or

(G) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to this order.

(b) I hereby determine that, to the extent section 203(b)(2) of the IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any person listed in or designated pursuant to subsection (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by subsection (a) of this section.

(c) The prohibitions in subsection (a) of this section include but are not limited to (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person listed in or designated pursuant to subsection (a) of this section, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 4. For those persons listed in or designated pursuant to this order who might have a constitutional presence in the United States, I find that, because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to subsection 1(a) of this order.

Sec. 5. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All executive agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken. The Secretary of the Treasury shall ensure compliance with those provisions of section 401 of the NEA (50 U.S.C. 1641) applicable to the Department of the Treasury in relation to this order.

Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent

with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of the IEEPA (50 U.S.C. 1703(c)).

Sec. 7. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized, subsequent to the issuance of this order, to determine, and to take necessary action to give effect to that determination, that circumstances no longer warrant the blocking of the property and interests in property of, or the prohibiting of transactions with, a person listed in the Annex to this order.

Sec. 8. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 9. This order is effective at 12:01 a.m. eastern standard time on October 30, 2006.

THE WHITE HOUSE,

October 27, 2006.

Billing code 3195–01–P

Annex

Individuals

1. Laurent Nkunda [born February 6, 1967; Founder, National Congress for the People's Defense, 2006; Senior Officer, Rally for Congolese Democracy-Goma (RCD-G), 1998-2006; Officer, Rwandan Patriotic Front, 1992-1998]

2. Ignace Murwanashyaka [born May 14, 1963; President, Forces Democratiques pour la Liberation du Rwanda (FDLR)]

3. Khawa Panga Mandro [born August 20, 1973; former President, Party for Unity and Safeguarding of the Integrity of Congo (PUSIC)]

4. Viktor Anatolijevitch Bout [born January 13, 1967; Owner, Great Lakes Business Company, Compagnie Aérienne des Grands Lacs; Bukavu Aviation Transport, and Business Air Services]

5. Sanjivan Singh Ruprah [born August 9, 1966; Businessman]

6. Dimitri Igorevich Popov [born February 13, 1961; General Manager, Great Lakes Business Company and Compagnie Aérienne des Grands Lacs]

7. Douglas Mpano [born December 28, 1965; Manager, Great Lakes Business Company and Compagnie Aérienne des Grands Lacs]

[FR Doc. 06–9020
Filed 10–30–06; 12:12 pm]
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Presidential Documents

Notice of October 27, 2006

Continuation of National Emergency Regarding the Proliferation of Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, the President issued Executive Order 13094 amending Executive Order 12938 to respond more effectively to the worldwide threat of weapons of mass destruction proliferation activities. On June 28, 2005, I issued Executive Order 13382 that, *inter alia*, further amended Executive Order 12938 to improve our ability to combat proliferation. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency first declared on November 14, 1994, must continue in effect beyond November 14, 2006. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
October 27, 2006.

[FR Doc. 06–9021
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Federal Register

Vol. 71, No. 210

Tuesday, October 31, 2006

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Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

57871–58242 2
58243–58480 3
58481–58734 4
58735–59004 5
59005–59360 6
59361–59648 10
59649–60054 11
60055–60412 12
60413–60656 13
60657–60804 16
60805–61372 17
61373–61632 18
61633–61868 19
61869–62054 20
62055–62196 23
62197–62374 24
62375–62550 25
62551–62874 26
62875–63212 27
63213–63664 30
63665–64110 31

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (See Proc. 8067) 60649
8057 58481
8058 58483
8059 58999
8060 59001
8061 59003
8062 59359
8063 59362
8064 60051
8065 60053
8066 60647
8067 60649
8068 61363
8069 61365
8070 61629
8071 61631
8072 62055
8073 62375

Executive Orders:
12938 (See Notice of October 27, 2006) 64109
12978 (See Notice of October 19, 2006) 62053
13067 (See EO 13412) 61369
13094 (See Notice of October 27, 2006) 64109
13382 (See Notice of October 27, 2006) 64109
13412 61369
13413 64105

Administrative Orders:
Notices:
Notice of October 19, 2006 62053
Notice of October 27, 2006 64109

5 CFR

630 .....61633, 63859

Proposed Rules:
591 63176

7 CFR

58 60805
226 62057
301 .....57871, 58243, 59649, 61373
319 .....61373, 62197
360 58735
361 58735
920 58246
924 60807
944 60807
955 58249
1005 62377
1007 62377
1030 63213
1032 63213
1033 63217
1218 59363
1421 60413
1427 .....60413, 63665
1430 63668
1792 60657

Proposed Rules:
56 59028
70 59028
301 63707
305 59694
318 59694
457 60439
1792 60672
2902 59862
3565 58545

8 CFR

1003 57873

9 CFR

77 58252
94 62198
307 59005
381 59005

Proposed Rules:
3 62215

10 CFR

72 60659
420 57885
431 60662

Proposed Rules:
2 .....61330, 64004
30 64004
40 64004
50 .....61330, 62664, 62942, 62947, 64004
51 61330
52 .....61330, 64004
60 64004
63 64004
70 64004
71 64004
72 .....60672, 62664, 64004
73 .....62664, 64004
76 64004
150 64004
430 .....59204, 58410
431 58308

12 CFR

204 62201
327 .....61374, 61385
701 62875
748 62876
910 60810
913 60810
951 59262
1732 62879

Proposed Rules:
327 60674

613 60678

13 CFR

101 63674
121 ....62204, 63064
123 ....63064, 63674
Proposed Rules:
120 59411

14 CFR

1 63392
11 63392
23 58735
25 ....61869, 62551, 63676
39 ....57887, 58254, 58485, 58487, 58493, 59363, 59366, 59368, 59651, 60414, 60417, 60663, 61391, 61395, 61634, 61636, 61639, 61642, 61644, 61648, 62380, 62886, 62888, 62890, 62895, 62897, 62899, 62902, 62904, 62907, 62910, 63219, 63225
43 58495
60 63392
71 ....58738, 59006, 59007, 59008, 59372, 60419, 60814, 60815, 60816, 60817, 60818, 61871, 62552, 62554, 62555
93 ....58495, 60424
97 ....58256, 61872, 61874, 63228, 63679
121 ....62209, 63392
125 59373
135 59373
1260 62209
1274 62209
Proposed Rules:
1 58914
21 58914
25 ....61427, 61432, 63718, 63723
39 ....58314, 58318, 58320, 58323, 58755, 60080, 60083, 60085, 60087, 60089, 60444, 60446, 60448, 60450, 60924, 60926, 60927, 61690, 62215, 62568, 62570, 63272
43 58914
45 58914
71 ....58758, 58760, 58761, 58762, 58764, 58765, 59031, 61922, 62397, 62398, 62954, 63725
93 62217
121 62399
331 58546
1266 62061

15 CFR

922 60055
Proposed Rules:
303 61223
Ch. VII 62065
715 59032
716 59032
721 59032
732 61435
736 61435
740 ....61435, 61692
742 61692
744 ....61435, 61692
748 61692
752 61435
764 61435
772 61435
922 ....58767, 59039, 59050, 59338

16 CFR

Proposed Rules:
310 58716
1307 61923
1410 61923
1500 61923
1515 61923

17 CFR

270 ....58257, 64086
Proposed Rules:
4 60454
240 60636
270 64093

18 CFR

153 62912
157 ....62912, 63680
375 62912
385 62912
388 58273
Proposed Rules:
35 58767
37 58767
40 57892
388 58325

19 CFR

12 61399
123 62922
163 61399
358 63230

20 CFR

404 ....60819, 61403
408 61403
416 61403
418 62923
Proposed Rules:
618 61618

21 CFR

189 59653
201 58739
520 59374
606 58739
610 58739
700 59653
1300 ....60426, 60609
1308 61876
1309 60609
1310 ....60609, 60823
1314 60609
Proposed Rules:
20 ....57892, 63726
25 57892
101 62400
170 62400
201 ....57892, 63726
202 57892
207 ....57892, 63726
225 57892
226 57892
314 63726
330 63726
500 57892
510 57892
511 57892
514 63726
515 ....57892, 63726
516 57892
558 57892
589 57892
601 63726
607 63726
610 63726
878 63728
1271 63726
1312 ....58569, 61436

22 CFR

51 58496
126 58496
1002 63235
1004 63236
1005 63235
Proposed Rules:
22 60928
51 60928
72 62219

24 CFR

970 62354
1000 61866
Proposed Rules:
15 58994

25 CFR

Proposed Rules:
292 58769

26 CFR

1 ....57888, 59669, 61648, 61662, 61877, 61888, 62556
31 58276
35 61877
54 61877
300 58740
301 ....60827, 60835, 61833
602 59696
Proposed Rules:
1 ....61441, 61692, 61693, 62067, 62407, 63732
300 59696

27 CFR

Proposed Rules:
40 62506
41 62506
44 62506
45 62506

28 CFR

16 58277

29 CFR

1910 63238
1915 60843
4022 60428
4044 60428
Proposed Rules:
1915 60932

30 CFR

250 62050
251 62050
Proposed Rules:
100 62572
701 59592
773 59592
774 59592
778 59592
843 59592
847 59592
931 61680
Proposed Rules:
935 61695

31 CFR

224 60847
256 ....60848, 62050
594 58742
595 58742
597 58742

32 CFR

245 61889
283 59009
284 59374
286 62940
706 ....58278, 61685
Proposed Rules:
143 60092
144 59411
161 62407

33 CFR

100 ....58279, 58281, 60064, 62557
110 63245
117 ....58283, 58285, 58286, 58744, 59381, 61409, 61410, 61895, 61897, 61899, 62058
160 62210
165 ....61899, 61901, 61903
Proposed Rules:
110 58230
117 ....58332, 58334, 58776, 61698, 61924, 62955
165 ....57893, 60094, 62075

34 CFR

106 62530
Proposed Rules:
462 61580

36 CFR

Proposed Rules:
Ch. I 59697
242 60095
1193 62226
1194 62226

37 CFR

201 63247
350 59010
351 59010
370 59010

38 CFR

Proposed Rules:
3 63732

40 CFR

49 60852
50 ....60853, 61144
51 ....58498, 60612
52 ....58498, 59383, 59674, 61686, 62210, 62384, 63247, 63250, 63694, 63696, 63699
53 61236
58 61236
59 58745
63 ....58499, 62388
80 58498
81 ....60429, 61686, 63642
82 58504
180 ....58514, 58518, 61410, 61906
271 63253
281 58521
302 58525
355 58525

Proposed Rules:
49 62227
51 ....62076, 62227
52 ....57894, 57905, 59413, 59414, 59697, 60098, 60934, 60937, 62076, 62415, 63275, 63737, 63738
63 ....59302, 61701
81 ....57894, 57905, 59414, 60937
174 59697
271 63276
281 58571
721 59066
799 61926

41 CFR

Proposed Rules:
102-35 61445

42 CFR

409 58286
410 58286
412 58286
413 58286
414 58286
424 58286
433 60663
485 58286
489 58286
505 58286
Proposed Rules:
423 61445
483 62957

44 CFR

62 60435
65 ....59385, 60854
67 ....59398, 60864, 60866, 60869, 60870, 60871, 60884, 60917, 60919
Proposed Rules:
67 ....60952, 60961, 60963, 60980, 60983, 60985, 60985, 60986, 60988

45 CFR

1310 58533
2554 61911
Proposed Rules:
2510 62573
2522 62573
2540 62573
2551 62573
2552 62573

46 CFR

1 60066
67 61413
68 61413

47 CFR

2 ....60067, 60075
73 61425
80 ....60067, 60075
Proposed Rules:
73 ....61455, 61456
80 60102

48 CFR

205 58536
207 58537
208 62559
209 62559
212 ....58537, 62560
216 58537
222 62560
225 ....58536, 58537, 58539, 62559, 62565, 62566
234 58537
236 58540
252 ....58541, 62560, 62566
1819 61687
1852 61687
5125 60076
5152 60076
Proposed Rules:
7 62229
12 62230
13 62230
30 ....58336, 58338
32 62230
33 62230
36 62230
42 62230
52 ....58336, 58338, 62230
204 61012
235 61012
252 61012

49 CFR

29 62394
37 63263
106 63701
213 59677
227 63066
229 ....61836, 63066
238 61836
541 59400
1150 62212
1180 62212
1544 62546
1546 62546
1548 62546
Proposed Rules:
211 59698
217 60372
218 60372
512 63738
591 58572
592 58572
593 58572
594 58572
604 60460
624 60681

50 CFR

17 ....58176, 60238, 63064, 63862
20 58234
300 ....58058, 63702
600 58058
622 ....59019, 60076
635 ....58058, 58287
648 ....59020, 62156, 62213, 63268, 63703
660 ....57889, 58289, 59405
679 ....57890, 58753, 59406, 59407, 60077, 60078, 60670, 61426, 62396, 63704
Proposed Rules:
17 ....58340, 58363, 58574, 58954, 59700, 59711, 61546, 62078, 63980
100 60095
635 58778
648 ....61012, 62972, 63277, 63749
660 ....61012, 61944

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 31, 2006

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Cottonseed Payment Program; published 10-31-06
- Dairy Disaster Assistance Payment Program; published 10-31-06

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Prepaid calling card services; published 8-2-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Standard instrument approach procedures; published 10-31-06

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Track safety standards:
- Continuous welded rail; joints inspection; published 10-11-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Egg, poultry, and rabbit products; inspection and grading;
- Fees and charges increase; comments due by 11-6-06; published 10-6-06 [FR E6-16528]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Sugar program; marketing of sugar derived from imported beet thick juice; comments due by 11-7-06; published 9-8-06 [FR E6-14881]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:
- Women, infants, and children; special supplemental nutrition program—
  - Food packages; revisions; comments due by 11-6-06; published 8-7-06 [FR 06-06627]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Kenai Peninsula subsistence resource region; comments due by 11-9-06; published 9-27-06 [FR 06-08280]
- Kenai Peninsula; subsistence resource region; comments due by 11-9-06; published 8-14-06 [FR 06-06905]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:
- Florida; comments due by 11-6-06; published 8-22-06 [FR E6-13869]
- Georgia
  - Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT

Industry and Security Bureau

Chemical Weapons Convention regulations:
- Plant sites that produce unscheduled discrete organic chemicals; inspection status form change; records review and recordkeeping requirements; comments due by 11-6-06; published 10-6-06 [FR E6-16597]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Atlantic herring; comments due by 11-6-06; published 9-6-06 [FR E6-14662]

Meetings:
- Pacific Fishery Management Council; comments due by 11-7-06; published 10-17-06 [FR E6-17241]

Ocean and coastal resource management:
- Marine sanctuaries—
  - Flower Garden Banks National Marine Sanctuary, TX; meetings; comments due by 11-10-06; published 9-7-06 [FR 06-07481]

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act:
- Portable generators; labeling requirements; comments due by 11-7-06; published 8-24-06 [FR 06-07069]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:
- Acquisition from communist Chinese military companies; prohibition; comments due by 11-7-06; published 9-8-06 [FR E6-14895]
- Tiered evaluation of offers; limitations; comments due by 11-7-06; published 9-8-06 [FR E6-14896]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Residential central air conditioners and heat pumps; test procedure; comments due by 11-9-06; published 7-20-06 [FR 06-06320]
  - Correction; comments due by 11-9-06; published 10-10-06 [FR E6-16648]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Municipal solid waste landfills, amendments; comments due by 11-7-06; published 9-8-06 [FR 06-07493]
- Polyvinyl chloride and copolymers production, primary and secondary copper smelting, and primary nonferrous metals (zinc, cadmium, and beryllium); comments due by 11-6-06; published 10-6-06 [FR 06-08434]

Air pollution; standards of performance for new stationary sources:
- Deadline extensions for source owners and operators to conduct performance tests; comments due by 11-7-06; published 8-9-06 [FR E6-12966]

Air quality implementation plans; approval and promulgation; various States:
- Maryland; comments due by 11-9-06; published 10-10-06 [FR E6-16653]

Grants and other Federal assistance:
- Tribal Clean Air Act authority—
  - Four Corners Power Plant; Navajo Indian Reservation, NM; source-specific Federal implementation plan; comments due by 11-6-06; published 9-12-06 [FR E6-15097]
  - Navajo Generating Station; Navajo Indian Reservation, AZ; source-specific Federal implementation plan; comments due by 11-6-06; published 9-12-06 [FR E6-15086]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Paraquat dichloride; comments due by 11-6-06; published 9-6-06 [FR E6-14642]
- Propoxycarbazone; comments due by 11-6-06; published 9-6-06 [FR E6-14641]

Toxic substances:
- Significant new uses—
  - Benzenesulfonic acid, etc.; comments due by 11-6-06; published 10-6-06 [FR E6-16574]

FEDERAL TRADE COMMISSION

Telemarketing sales rules:
- Prerecorded telemarketing calls, etc.; seller and telemarketer compliance; comments due by 11-6-06; published 10-4-06 [FR 06-08524]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Kenai Peninsula subsistence resource region; comments due by 11-9-06; published 9-27-06 [FR 06-08280]
- Kenai Peninsula; subsistence resource

region; comments due by 11-9-06; published 8-14-06 [FR 06-06905]

Importation, exportation, and transportation of wildlife:

Injurious wildlife—

Silver carp and largescale silver carp; comments due by 11-6-06; published 9-5-06 [FR 06-07416]

JUSTICE DEPARTMENT

Alcohol, Tobacco, Firearms, and Explosives Bureau

Explosives:

Commerce in explosives—

Propellant actuated device; definition; comments due by 11-9-06; published 8-11-06 [FR E6-13201]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:

Schedule II controlled substances; multiple prescriptions; comments due by 11-6-06; published 9-6-06 [FR E6-14520]

JUSTICE DEPARTMENT

Federal Bureau of Investigation

Criminal justice information systems:

Criminal history record information and fingerprint submissions; retention and exchange; comments due by 11-6-06; published 9-5-06 [FR E6-14605]

LABOR DEPARTMENT

Mine Safety and Health Administration

Mine Improvement and New Emergency Response Act; implementation:

Assessment of civil penalties; criteria and procedures; comments due by 11-9-06; published 10-26-06 [FR 06-08933]

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:

Retransmission of digital broadcast signals pursuant to the cable statutory license; comments due by 11-6-06; published 9-20-06 [FR 06-07927]

SMALL BUSINESS ADMINISTRATION

Business loans:

Lender examination and review fees; comments due by 11-9-06; published 10-10-06 [FR E6-16750]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 11-6-06; published 9-6-06 [FR E6-14624]

BAE Systems (Operations) Ltd.; comments due by 11-6-06; published 9-6-06 [FR E6-14631]

Dassault; comments due by 11-6-06; published 10-5-06 [FR E6-16452]

Hartzell Propeller Inc.; comments due by 11-7-06; published 9-8-06 [FR E6-14691]

McDonnell Douglas; comments due by 11-6-06; published 9-20-06 [FR 06-07945]

Raytheon; comments due by 11-7-06; published 9-8-06 [FR 06-07511]

Airworthiness standards:

Special conditions—

Boeing Model 777-200 series airplanes; comments due by 11-7-06; published 10-18-06 [FR E6-17345]

Garmin International, Inc.; Raytheon Model C90A King Air airplane; comments due by 11-6-06; published 10-5-06 [FR E6-16497]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Uniform Traffic Control Devices Manual—

Traffic sign retroreflectivity; maintenance methods; comments due by 11-6-06; published 5-8-06 [FR E6-06882]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline safety:

Unusually sensitive areas; protection from rural onshore hazardous liquid gathering lines and low-stress lines; comments due by 11-6-06; published 9-6-06 [FR 06-07438]

Regulatory reviews:

Regulatory Flexibility Act Section 610 and plain language reviews; comments due by 11-6-06; published 8-8-06 [FR E6-12859]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Capital asset exclusion for accounts and notes receivable; comments due by 11-6-06; published 8-7-06 [FR E6-12789]

Essential governmental function definition and limitation to activities customarily performed by States and local governments; definition; comments due by 11-7-06; published 8-9-06 [FR E6-12884]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 6061/P.L. 109–367

Secure Fence Act of 2006 (Oct. 26, 2006; 120 Stat. 2638)

Last List October 19, 2006

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