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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–09–0020; FV09–984–3 FR]

Walnuts Grown in California; Increased Assessment Rate and Changes to Regulations Governing Reporting and Recordkeeping

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Walnut Board (Board) for the 2009–10 and subsequent marketing years from $0.0131 to $0.0177 per kernelweight pound of assessable walnuts. This rule also changes reporting and recordkeeping regulations in conformance with amendments made on March 3, 2008, to the marketing order that regulates the handling of walnuts grown in California. The Board locally administers the marketing order. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* November 4, 2009.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Debbie.Wray@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as established herein will be applicable to all assessable walnuts beginning on September 1, 2009, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2009–10 and subsequent marketing years from $0.0131 to $0.0177 per kernelweight pound of assessable walnuts. It also makes conforming changes to reporting and recordkeeping regulations, which are needed to reflect recent marketing order amendments.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008–09 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0131 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 18, 2009, and unanimously recommended 2009–10 expenditures of $5,894,100 and an assessment rate of $0.0177 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $3,809,000. The assessment rate of $0.0177 is $0.0046 per pound higher than the rate currently in effect. The increased assessment rate is necessary to cover increased expenses for domestic market promotion, research activities, and administrative expenses. The higher assessment rate should generate sufficient income to cover anticipated 2009–10 expenses.

The following table compares major budget expenditures recommended by the Board for the 2008–09 and 2009–10 marketing years:

Budget expense categories	2008–09	2009–10
Employee Expenses	$410,500	$535,000
Travel/Board Expenses	100,000	120,000
Office Costs/Annual Audit	142,500	164,750
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Estimate	110,000	120,000
Production Research *	805,000	805,000
Contingency-Research Issues	30,000	100,000
Domestic Market Development	2,135,000	4,030,500
Reserve for Contingency	71,000	13,850

* Includes Research Director's compensation.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 333,000,000 kernelweight pounds, which should provide $5,894,100 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two year's budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

The estimate for merchantable shipments is based on historical data, which is an average of the three prior years' production of 370,000 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (370,000 tons × 2,000 pounds per ton × .45).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2009–10 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Recent amendments to the order (73 FR 11328, March 3, 2008) changed the Board's name to ''California Walnut Board'' (CWB), changed the Board's marketing year from August 1 through July 31 to September 1 through August 31, and replaced the term ''handler carryover'' with the term ''handler inventory.'' To reflect these changes, the Board unanimously recommended conforming changes to the order's reporting and recordkeeping regulations at a meeting on February 27, 2009.

Section 984.456(a) is revised to specify that beginning on September 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts in that marketing year. Section 984.471 is revised by changing the term ''carryover'' to ''inventory'', by requiring handlers to report September 1 inventory information by September 15, and by changing the names of the related inventory forms to ''CWB Form No. 4'' and ''CWB Form No. 5.'' Section 984.476 is revised to require that handlers file reports of walnut import receipts with the Board by December 5 for receipts between September 1 and November 30, by March 5 for receipts between December 1 and the end of February, by June 5 for receipts between March 1 and May 31, and by September 5 for receipts between June 1 and August 31; and to change the name of the reporting form to ''CWB Form No. 7.'' Section 984.480(d) is revised to specify that inventories of all walnut quantities held on September 1 must be reported to the Board. The acronym ''WMB'' is replaced with ''CWB'' in form names described in the following sections not previously listed above: §§ 984.456(b), 984.464(c), 984.472(a), and 984.472(b). Finally, in order to update the regulations, gender-specific language is changed in §§ 984.456(b) and 984.472(a) to replace ''he'' and ''his'' with ''he/she'' and ''his/her.''

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are currently 58 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 223,000 bearing acres during 2008–09. The average yield for the 2008–09 crop was 1.96 tons per acre, which is higher than the 1.56 tons per acre average for the previous five years. NASS reported the value of the 2008–09 crop at $1,210 per ton, which is lower than the previous five-year average of $1,608 per ton.

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of

1.50 tons per acre would have been expected to produce about 150 tons of walnuts during 2007–08. At $2,290 per ton, that farm's production would have had an approximate value of $344,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $344,000 in 2007–08. This is well below the SBA threshold of $750,000; thus, the majority of California's walnut growers could be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2007–08 marketing year and could therefore be considered small handlers according to the SBA definition.

This rule increases the assessment rate established for the Board and collected from handlers for the 2009–10 and subsequent marketing years from $0.0131 to $0.0177 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2009–10 expenditures of $5,894,100 and an assessment rate of $0.0177 per kernelweight pound of assessable walnuts. The assessment rate of $0.0177 is $0.0046 higher than the 2008–09 assessment rate. The quantity of assessable walnuts for the 2009–10 marketing year is estimated at 370,000 tons. Thus, the $0.0177 rate should provide $5,894,100 in assessment income and be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2008–09 and 2009–10 marketing years:

Budget expense categories	2008–09	2009–10
Employee Expenses	$410,500	$535,000
Travel/Board Expenses	100,000	120,000
Office Costs/Annual Audit	142,500	164,750
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Estimate	110,000	120,000
Production Research *	805,000	805,000
Contingency-Research Issues	30,000	100,000
Domestic Market Development	2,135,000	4,030,500
Reserve for Contingency	71,000	13,850

* Includes Research Director's compensation.

The Board reviewed and unanimously recommended 2009–10 expenditures of $5,894,100. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 333,000,000 kernelweight pounds, which should provide $5,894,100 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

According to NASS, the season average grower prices for the years 2007 and 2008 were $2,290 and $1,210 per ton, respectively. These prices provide a range within which the 2009–10 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $0.605 to $1.15. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2009–10 price range estimate of $1.34 to $2.56 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0177 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2009–10 marketing year as a percentage of total grower revenue would thus likely range between 0.691 and 1.321 percent.

As a result of amendments to the order on March 3, 2008 (73 FR 11328), the Board unanimously recommended conforming changes to the order's reporting and recordkeeping regulations at its meeting on February 27, 2009. These conforming changes reflect amendments to the marketing year, terminology, and Board name. The conforming changes include the date when a handler may become an agent of the Board to dispose of reserve walnuts. Conforming changes replace the term ''carryover'' with ''inventory'' and modify the first of three dates in a marketing year when handlers are required to report their inventory to the Board. Further conforming changes include the dates that handlers must report to the Board their receipts of walnuts from outside of the United States and for what periods. Another conforming change modifies the first of three dates in a marketing year wherein handlers must indicate in their books and records the quantity of walnuts they held. Finally, conforming changes replace the Board name acronym ''WMB'' with ''CWB'' in form numbers. In addition to these conforming changes, gender-specific language is changed from ''he'' and ''his'' to ''he/she'' and ''his/her''. There are no viable alternatives to these proposed conforming changes.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meetings were widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the May 18, 2009, and February 27, 2009, meetings were public meetings, and all entities, both

large and small, were able to express views on this issue.

This final rule implements conforming changes to several Board forms previously approved by the Office of Management and Budget (OMB), under OMB No. 0581–0178, Vegetable and Specialty Crops. These changes will not affect the burden approved under that collection. The revised forms were submitted to OMB through a change of worksheet and approved on July 23, 2009. This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 28, 2009 (74 FR 44300). Copies of the proposed rule were also mailed or sent via facsimile to walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 28, 2009, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2009–10 marketing year began on September 1, 2009, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and handlers are aware of this action, which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years. Also, the reporting and recordkeeping regulations need to be brought into conformance with amendments made to the order in 2008, and revised forms need to be used by handlers in the 2009–10 marketing year. Finally, a 30-day comment period was provided for in the proposed rule, and no comments in opposition to the rule were received.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2009, an assessment rate of $0.0177 per kernelweight pound is established for California merchantable walnuts.

■ 3. Amend § 984.456 by revising paragraphs (a) and (b) to read as follows:

§ 984.456 Disposition of reserve walnuts and walnuts used for reserve disposition credit.

(a) Beginning September 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts of such marketing year. The agency shall be established upon execution of an ''Agency Agreement for Reserve Walnuts'' setting forth the terms and conditions specified by the Board for the sale of reserve walnuts in authorized outlets.

(b) Any handler who desires to transfer disposition credit in excess of his/her reserve obligation to another handler shall submit a request to the Board for such transfer on CWB Form No. 17 signed by both handlers and the Board shall credit such transfer.

* * * * *

■ 4. Amend § 984.464 by revising paragraph (c) to read as follows:

§ 984.464 Disposition of substandard walnuts.

* * * * *

(c) Each handler who disposes of substandard walnuts to an approved crusher, livestock feed manufacturer or livestock feeder shall upon shipment report to the Board on CWB Form No. 20, the quantities disposed of or shipped.

■ 5. Section 984.471 is revised to read as follows:

§ 984.471 Reports of handler inventory.

Reports of handler inventory as of September 1, January 1, and April 1 of each marketing year shall be submitted to the Board on CWB Form No. 4 for inshell walnuts and on CWB Form No. 5 for shelled walnuts, on or before September 15, January 15, and April 15 respectively, of that marketing year.

■ 6. Section 984.472 is revised to read as follows:

§ 984.472 Reports of merchantable walnuts shipped.

(a) Reports of merchantable walnuts shipped during a month shall be submitted to the Board on CWB Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts: the quantity shipped; whether they were shipped into domestic or export channels; and for exports, the quantity by country of destination. If a handler makes no shipments during any month he/she shall submit a report marked ''None.'' If a handler has completed his/her shipments for the season, he/she shall mark the report ''Completed,'' and he/she shall not be required to submit any additional CWB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased and the quantity inspected and certified as merchantable walnuts.

■ 7. Section 984.476 is revised to read as follows:

§ 984.476 Report of walnut receipts from outside of the United States.

Each handler who receives walnuts from outside of the United States shall

file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number, whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

■ 8. Amend § 984.480 by revising paragraph (d) to read as follows:

§ 984.480 Books and other records.

* * * * *

(d) The quantities held on September 1, January 1, and April 1 of each marketing year.

Dated: October 27, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–26368 Filed 11–2–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS–FV–09–0045; FV09–987–2 FR]

Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Date Administrative Committee (Committee) for the 2009–10 and subsequent crop years from $0.60 to $0.75 per hundredweight of dates handled. The Committee locally administers the marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* November 4, 2009.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Terry.Vawter@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of dates grown or packed in Riverside County, California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning October 1, 2009, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2009–10 and subsequent crop years from $0.60 to $0.75 per hundredweight of dates handled.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008–09 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 9, 2009, and unanimously recommended 2009–10 expenditures of $200,000 and an assessment rate of $0.75 per hundredweight of California dates. In comparison, last year's budgeted expenditures were $176,384. The assessment rate of $0.75 is $0.15 higher than the rate currently in effect. The Committee recommended a higher assessment rate to cover increased expenses including increased marketing and promotion efforts, and nutritional research. Income generated through the higher assessment rate combined with reserve funds should be sufficient to cover anticipated 2009–10 expenses.

Section 987.72(c) states that the reserve may not exceed 50 percent of

the average of expenses incurred during the most recent five preceding crop years. With higher anticipated expenses, the reserve at the end of the 2009–10 crop year is not projected to exceed this limit.

Income from sales of cull dates are deposited in a surplus account for subsequent use by the Committee to cover the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets. Pursuant to § 987.72(b), the Committee is authorized to temporarily use funds derived from assessments to defray expenses incurred in disposing of surplus dates. All such expenses are required to be deducted from proceeds obtained by the Committee from the disposal of surplus dates. For the 2009–10 crop year, the Committee estimated that $1,500 from the surplus account would be needed to temporarily defray expenses incurred in disposing of surplus dates.

The major expenditures recommended by the Committee for the 2009–10 crop year include $60,000 for general and administrative programs, $97,000 for promotional programs, and $28,000 for marketing and media consulting. The Committee also budgeted $15,000 to conduct nutritional research. They also plan a series of events to commemorate the tenth anniversary of their annual date Chef's competition.

By comparison, expenditures recommended by the Committee for the 2008–09 crop year included $66,384 for general and administrative programs, $82,000 for promotional programs, $28,000 for marketing and media consulting.

The assessment rate of $0.75 per hundredweight of assessable dates was derived by applying the following formula

Where:

A = 2008–09 estimated reserve on 09/30/09 ($65,566);

B = 2009–10 estimated reserve on 09/30/10 ($39,566);

C = 2009–10 expenses ($200,000);

D = Cull Surplus Fund ($1,500);

F = 2009–10 expected shipments (23,000,000 pounds).

$$[(C - A + B - D)/F] \times 100.$$

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary.

The Committee's 2009–10 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 85 producers of dates in the production area and 9 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year, 2008, indicates that about 3.57 tons of dates were produced per acre. The 2008 grower price published by NASS was $1,580 per ton. Thus, the value of date production in 2008 averaged about $5,640 per acre (3.57 tons per acre times $1580 per ton). At that average price, a producer would have to harvest 133 acres to receive an annual income from dates of $750,000 ($750,000 divided by $5,640 per acre equals 133 acres).

According to committee staff, the majority of California date producers farm fewer than 152 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the Committee, the majority of handlers of California dates may also be considered small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent crop years from $0.60 to $0.75 per hundredweight of dates handled. The Committee unanimously recommended 2009–10 expenditures of $200,000 and an assessment rate of $0.75 per hundredweight of dates. The assessment rate of $0.75 is $0.15 higher than the 2008–09 rate currently in effect. The quantity of assessable dates for the 2009–10 crop year is estimated at 11,500 tons or 230,000 hundredweight of dates. Thus, the $0.75 rate should provide $172,500 in assessment income and, with reserve funds of $65,566 and the $1,500 contribution from the surplus program, will be adequate to meet the 2009–10 crop year expenses.

The major expenditures recommended by the Committee for the 2009–10 crop year include $60,000 for general and administrative programs, $97,000 for promotional programs, and $28,000 for marketing and media consulting. The Committee also budgeted $15,000 to conduct nutritional research. They also plan a series of events to commemorate the tenth anniversary of their annual date Chef's competition.

The Committee reviewed and unanimously recommended 2009–10 crop year expenditures of $200,000. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Marketing Subcommittee. Alternative expenditure levels were an option available to the Committee, but the Committee ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of $0.75 per hundredweight of dates was then derived, based upon the Committee's estimates of the incoming reserve, income, and anticipated expenses.

As previously noted, according to the NASS data, the average grower price for 2008 crop dates was $1,580 per ton, or $79 per hundredweight. The average grower price for the period of 2004–08 was $1,750 per ton, or $87.50 per hundredweight. No official NASS estimate is available yet for 2009.

A review of historical information and preliminary information pertaining to

the upcoming crop year indicates that the grower price for the 2009 date crop could range between $65.50 and $114.50 per ton. Therefore, the estimated assessment revenue for the 2009 crop year as a percentage of total grower revenue could range between 0.7 percent and 1.1 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 9, 2009, meeting was a public meeting and all entities, both large and small, were encouraged to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on August 28, 2009 (74 FR 44304). Copies of the proposed rule were also provided to all date handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 28, 2009, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the crop year began on October 1, 2009; handlers are already receiving 2009–10 dates from growers; and the assessment rate applies to all dates received during the 2009–10 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2009, an assessment rate of $0.75 per hundredweight is established for California dates.

Dated: October 27, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–26369 Filed 11–2–09; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245–AF44

HUBZone and Government Contracting

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule amends the U.S. Small Business Administration's (SBA's or Agency's) Historically Underutilized Business Zone (HUBZone) program's definition of the term ''employee.''

DATES: This rule is effective May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mariana Pardo, HUBZone Program Office, at (202) 205–2985 or by e-mail at: *mariana.pardo@sba.gov.*

SUPPLEMENTARY INFORMATION:

On January 26, 2007, the SBA published in the **Federal Register**, 72 FR 3750, a proposed rule to amend the HUBZone program's definition of the term ''employee.'' In this proposed rule, SBA sought to revise the definition of the term ''employee'' to: (1) Delete the full-time equivalency requirement; (2) specifically allow HUBZone small business concerns (SBCs) to count leased or temporary employees or employees obtained through a temporary agency, professional employee organization (PEO) arrangement or union agreement, as employees; (3) specifically state that SBA relies on the totality of circumstances as further defined by Size Policy Statement No. 1 when determining whether individuals are employees of a concern; (4) explain that volunteers are not employees; (5) define volunteers as those persons that receive no compensation; and (6) address the status of individuals that own all or part of the SBC but receive no compensation for work performed.

The SBA received a total of eight comments on the proposed rule. Five comments supported the rule in general and three opposed the rule. These comments are discussed in detail below.

Summary of Comments and Response to Comments

The SBA received one comment stating that the definition of the term ''employee'' should specifically address the issue of deferred compensation. The commenter wanted the SBA to clarify that a person that has agreed to defer his or her compensation will not be considered an employee.

The SBA agrees with this comment and believes that if it permitted a non-owner individual to work for no compensation, or even deferred compensation, and be considered an employee for HUBZone program purposes, it would open up the program to potential abuse. Finding a person to be an employee where the individual has deferred compensation is contrary to the intent of the HUBZone program, which is to increase gainful employment in historically

underutilized business zones. Further, we note that the issue regarding deferred compensation was actually the subject of a recent Court of Federal Claims decision. In that case, the court ruled that SBA's interpretation of its regulation—that persons who have agreed to defer his or her compensation will not be considered an employee for HUBZone program purposes—is reasonable. *Aeolus Systems, LLC* v. *United States,* No. 07–581 C, slip op. (Fed. Cl. Oct. 31, 2007). Consequently, the SBA agrees with this comment, and has clarified the rule to specifically address deferred compensation.

Another commenter recommended deleting the specific language in the proposed rule that refers to ''professional employee organization'' (PEO) and replacing it with the phrase ''or co-employed pursuant to a professional employer organization arrangement.'' The comment stated that the purpose of this amendment is to distinguish PEOs from leasing and temporary employment companies or agencies. According to the comment, with respect to PEOs, the PEO and the small business client co-employ the employees; in comparison, temporary agencies or leasing companies supply a pool of labor to the clients and the workers return to the temporary agency or leasing company for reassignment upon termination of the arrangement. The SBA agrees with this comment and has made the recommended change.

In addition, the same commenter was concerned about references in the preamble to the proposed rule concerning SBA's Size Policy Statement and ''payment of wages.'' In the preamble to the proposed rule, the SBA explained that because of the numerous types of agreements in the public domain concerning temporary, leased, and co-employees, SBA cannot state definitively that each of those types of employees are employees of the HUBZone SBC. 72 FR 3752. Therefore, the SBA will look to the totality of circumstances, including whether the HUBZone SBC pays the employees' wages. *Id.*

The comment stated that the ''W–2 employer'' should not be the determinative factor in deciding who employs a worker. Specifically, with respect to PEOs, the commenter states that the client small business provides the payroll to the PEO, who in turn pays the employees. The SBA agrees, and the ''W–2 employer'' is not the determinative factor. As the comment noted, with respect to PEOs, the small business client provides the funding for the employees' wages when it provides the payroll to the PEO, who in turn remits payment to the co-employees. As explained in Size Policy Statement No. 1, the SBA will review many factors, including whether the HUBZone SBC pays the employees wages and/or withholds employment taxes and/or provides employment benefits. 72 FR at 3753. Consequently, the SBA does not believe any change to the proposed rule or other clarification is necessary to address this comment.

The SBA received three comments opposing the proposal to count workers obtained through unions as employees of the HUBZone SBC and one comment specifically supporting the rule. One comment from a union stated its belief that the rule will prevent companies from using union workers and that the SBA does not have a sufficient basis for this proposal. Similarly, another commenter stated its belief that the rule will prevent small businesses from using unions because unions can not control the residency of the union members.

The definition of the term ''employee'' includes all persons employed by a HUBZone SBC. With respect to union workers, the workers are performing work for the HUBZone SBC, not the union. The HUBZone SBC pays the wages of these employees and controls the employees' work. In at least one private letter ruling, the IRS has stated that ''when working on the targeted jobs, the workers are employees of the contractors for whom they perform services. They are not employees of the Union.'' I.R.S. Priv. Ltr. Rul. 91–06–047 (Nov. 15, 1990). The same is true here—the workers are employees of the HUBZone SBC for whom they perform services and are not employees of the union. In addition, if a HUBZone SBC were allowed to utilize union workers and not count them as employees, it would be inconsistent with SBA's treatment of other similar types of workers, including temporary workers and those provided via a PEO arrangement. Thus, the definition of the term employee includes those workers provided by a union and who perform services for the qualified HUBZone SBC.

One commenter opposed the rule in general and believes that SBA has no basis to support the finding that any change is needed in the definition of the term ''employee'' to prevent abuse. This same commenter believes that the proposed rule creates uncertainty in who is counted as an employee and that the totality of circumstances test as proposed is different than the current test. This commenter believes that the rule will harm smaller businesses that can not maintain a large staff to meet the requirements of the program. In sum, the commenter believes that more time is needed before making a change to this definition.

The SBA disagrees with this comment. First, the totality of circumstances test has been in the SBA rule since the inception of the program. 63 FR 31896, 31909 (June 11, 1998). Second, at least one court has affirmed the SBA's use of this test and ruled that SBA's incorporation of relevant factors from a previous policy statement into the regulation's ''totality of circumstances'' test is not erroneous or contrary to controlling statute or regulation. *See Metro Machine Corp.* v. *SBA,* 305 F.Supp.2d 614 (E.D. VA 2004). Finally, the agency has been reviewing the definition of the term employee for several years now, beginning with a proposed rule in 2002. The SBA has received a relatively few number of comments evidencing to the Agency that the proposal is acceptable to most HUBZone SBCs (who have now had 3 opportunities to formally comment on the issue). The SBA has conducted thousands of program examinations and re-certifications and has examined this issue thoroughly. The SBA believes that it has a reasonable basis to support a change in the regulation, as set forth in the proposed and this final rule.

One comment stated that the SBA should not allow employees working only 40 hours a month to be considered employees for HUBZone program purposes because such a rule would promote abuse and more non-HUBZone residents would end up getting higher paying full-time work. In contrast, one commenter specifically agreed with the proposed minimum of 40 hours per month. As explained in the proposed rule, the SBA believes that the 40 hours per month requirement precludes a firm from receiving HUBZone status if it merely hires a few HUBZone residents to work one or two hours a week. SBA believes that this minimum work requirement (40 hours a month) provides flexibility to the HUBZone SBCs and the employees who choose to work part-time, but at the same time minimizes possible abuses of the rule. The SBA notes that in order to determine whether an employee works 40 hours a month, the Agency will rely on the most recent payrolls of the small business.

The SBA received two comments concerning the effect this rule will have on current HUBZone program participants and those participants that have already submitted an offer or are getting ready to submit an offer. One of these commenters suggested the SBA provide for a phase in period of one year for those firms that currently use leased

employees. After reviewing these comments, the SBA has provided for an effective date of this rule 6 months from its date of publication in the **Federal Register.** The SBA believes this would be sufficient time for HUBZone small businesses to make any necessary changes to address the new definition of the term employee.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. Further, this rule meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

OMB has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866 and in the proposed rule, the SBA prepared a Regulatory Impact Analysis. The SBA received no comments on this analysis and continues to believe that our analysis is accurate.

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

Final Regulatory Flexibility Analysis for the HUBZone Regulations

SBA has determined that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* In the proposed rule, the SBA prepared an Initial Regulatory Flexibility Act Analysis (IRFA). The SBA did not receive any comments on this IRFA. The RFA requires the SBA to prepare a Final Regulatory Flexibility Act Analysis (FRFA). The RFA provides that when preparing a FRFA, an agency shall address all of the following: A statement of the need for, and objectives of, the rule; a summary of the significant issues raised by the public in response to the IRFA; a description of the estimate of the number of small entities to which the rule will apply; a description of the projected reporting, recordkeeping and other compliance requirements; and a description of the steps taken to minimize the significant economic impact on small entities. This FRFA considers these points and the potential impact of the regulation on small entities.

(a) Need for, and Objectives of, the Rule

SBA believes that the amendments to the definition of the term ''employee'' will ease HUBZone program eligibility requirements perceived to be burdensome on concerns, and streamline the operation of the HUBZone Program.

(b) Summary of Significant Issues Raised by the Public in Response to the Initial RFA

The SBA did not receive any comments on the IRFA. The SBA addressed all of the comments it received on the rule in the preamble, set forth above.

(c) Estimate of the Number of Small Entities to Which the Rule May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rule. The RFA defines ''small entity'' to include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' SBA's programs do not apply to ''small organizations'' or ''small governmental jurisdictions'' because they are non-profit or governmental entities and do not qualify as ''business concerns'' within the meaning of SBA's regulations. SBA's programs generally apply only to for-profit business concerns. Therefore, the regulation (like the regulation currently in effect) will not impact small organizations or small governmental jurisdictions.

Small businesses that participate in Federal Government contracting are the specific group of small entities affected most by this rule. While there is no precise estimate for the number of SBCs that will be affected by this rule, there are approximately 368,000 SBCs registered in the Central Contractor Registration's (CCR's) Dynamic Small Business Search (DSBS) database (formerly known as PRO–Net). The DSBS contains profiles of SBCs that includes information from SBA's files and CCR. While there is no precise estimate for the number of SBCs that will be affected by this rule, SBA believes that over 30,000 SBCs will apply for certification as qualified HUBZone SBCs over the life of the program. This number is based upon 1992 census data, the number of HUBZone SBCs registered in CCR, and a reasonable extrapolation of this data to account for growth.

In the past few years, SBA has received thousands of applications for the HUBZone Program and has certified over 10,000 SBCs into the program. SBA believes that the incentives available through participation in the program, *i.e.,* HUBZone set-asides and price evaluation preferences, will result in additional SBCs relocating to HUBZones. SBA is unable to predict the number of SBCs that will relocate to HUBZones and be eligible for the program, but estimates that approximately 30,000 SBCs are now eligible or will become eligible.

Of the 30,000 SBCs that have a principal office located in a HUBZone, SBA believes that most will be directly affected by this rule. This is based on the fact that of the over 10,000 HUBZone SBCs listed in CCR, over 7,000 list services and construction as the general nature of their business. Thus, it appears that most qualified HUBZone SBCs are in those industries. According to the information received, SBCs in the construction and services industries use temporary and leased employees.

The final amendment to the definition of the term employee will allow leased and temporary employees to be considered employees of a concern. These leased and temporary employees would be counted toward the 35% HUBZone residency and principal office requirements. At one point, such employees comprised approximately 2–5% of the work force in the U.S. economy. *Labor Shortages, Needs, and Related Issues in Small and Large Businesses,* Nov. 2, 1999 (report prepared for the Office of Advocacy) (available at: *http://www.sba.gov/advo/research/rs195atot.pdf*). In addition, the report stated that small businesses accounted for the employment of about 40% of such employees. *Id.* Although SBA does not know exactly how many SBCs eligible for the HUBZone Program use leased or temporary employees, this data further evidences that many concerns may be affected by this rule.

(d) Projected Reporting, Recordkeeping and Other Compliance Requirements

This final rule imposes no new reporting requirement on small businesses.

(e) Steps Taken to Minimize the Significant Economic Impact on Small Entities

SBA has decided that this rule will not take effect until six months after publication in the **Federal Register.**

This will allow HUBZone SBCs sufficient time to make any necessary changes to remain eligible for the program and for HUBZone contracts. SBA believes this will minimize the impact of this rule, if any, on HUBZone small businesses.

List of Subjects in 13 CFR Part 126

Government procurement, Small businesses.

■ For the reasons set forth above, SBA amends 13 CFR part 126, as follows:

PART 126—HUBZONE PROGRAM

■ 1. The authority citation for 13 CFR part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

■ 2. Amend § 126.103 by revising the definition of the term ''employee'' to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1, in determining whether individuals are employees of a concern. Volunteers (*i.e.,* individuals who receive deferred compensation or no compensation, including no in-kind compensation, for work performed) are not considered employees. However, if an individual has an ownership interest in and works for the HUBZone SBC a minimum of 40 hours per month, that owner is considered an employee regardless of whether or not the individual receives compensation.

* * * * *

Dated: August 3, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–26229 Filed 11–2–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM419; Special Conditions No. 25–396–SC]

Special Conditions: Airbus Model A340 Series Airplanes; Seats With Inflatable Lap Belts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Airbus Model A340 airplanes. These airplanes, manufactured by Airbus, will have novel or unusual design features associated with seats with inflatable lap belts. The FAA has issued similar special conditions addressing this issue for the Airbus Model A340 series airplanes. 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 November 3, 2009. We must receive your comments by December 18, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, *Attn:* Rules Docket (ANM–113), Docket No. NM419, 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. NM419. 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: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195, facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus 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. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

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 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 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 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, send us 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 September 23, 2008, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex, France, applied for a design change to Type Certificate No. A43NM for installation of inflatable lap belts in Airbus Model A340 series airplanes. These special conditions allow installation of inflatable lap belts for head-injury protection on certain seats in Airbus Model A340 series airplanes. The FAA has issued similar special conditions, No. 25–371–SC, on May 7, 2009, for Airbus Model A340 series airplanes. These airplanes, currently approved under Type Certificate No. A43NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, twin-aisle, large-sized, transport-category airplanes.

The inflatable lap belt is designed to limit occupant forward excursion if an accident occurs. This will reduce the

potential for head injury, thereby reducing the Head Injury Criterion (HIC) measurement, required by Title 14, Code of Federal Regulations (14 CFR), 25.562(c)(5). The inflatable lap belt behaves similarly to an automotive inflatable air bag, except that the air bag in the Airbus design is integrated into the lap belt and inflates away from the seated occupant. While inflatable air bags are now standard in the automotive industry, the use of an inflatable lap belt is novel for commercial aviation.

Title 14, Code of Federal Regulations (14 CFR) 121.311(j) requires that no person may operate a transport category airplane type certificated after January 1, 1958, and manufactured on or after October 27, 2009, in passenger-carrying operations, after October 27, 2009, unless all passenger and flight-attendant seats on an airplane operated under part 121 meet the requirements of § 25.562 in effect on or after June 16, 1988.

The Airbus Model A340 series airplanes, manufactured before October 27, 2009, operated under part 121, are required to comply with certain aspects of § 25.562 as specified per Type Certificate No. A43NM. Airbus Model A340 series airplanes manufactured on or after October 27, 2009, operated under part 121, must meet all of the requirements of § 25.562 for passenger and flight-attendant seats. The FAA advises installers to show full compliance with § 25.562 so that an operator, under part 121, may be able to use the airplane without having to do additional certification work. In addition, some foreign civil airworthiness authorities have invoked these same operator requirements in the form of airworthiness directives.

Occupants must be protected from head injury, as required by § 25.785, either by eliminating any injurious object within the striking radius of the head, or by installing padding. Traditionally, this has required either a setback of 35 inches from any bulkhead or other rigid interior feature or, where not practical, the installation of specified types of padding. The relative effectiveness of these established means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, specifically § 25.562, a new standard was created that quantifies required head-injury protection.

Each seat type design approved for crew or passenger occupancy during takeoff and landing, as required by § 25.562, must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that protection must be provided or the seat be designed so that the head impact does not exceed a HIC value of a 1,000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head-injury protection be provided for passengers in a severe crash.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lap belts, the FAA recognizes that appropriate pass/fail criteria need to be developed that fully address the safety concerns specific to occupants of these seats.

Type Certification Basis

Under the provisions of § 21.101 Airbus must show that the A340 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A43NM, 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. A43NM are as follows: 14 CFR part 25, as amended by Amendments 25–1 through 25–63; certain regulations at later Amendments 25–65, 25–66, and 25–77; and Amendment 25–64 with exceptions. Refer to Type Certificate Data Sheet (TCDS) A43NM, as applicable, for a complete description of the certification basis for these models, including certain special conditions that are not relevant to these proposed special conditions.

If the regulations incorporated by reference do not contain adequate or appropriate safety standards for the Airbus Model A340 series airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A340 series 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 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

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

Airbus Model A340 series airplanes will incorporate the following novel or unusual design features: Seats with inflatable lap belts.

Discussion

The inflatable lap belt has two potential advantages over other means of head-impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, because such devices will likely provide a level of safety that exceeds the minimum standards of part 25. Conversely, inflatable lap belts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages to develop standards for this design feature.

The FAA has considered the installation of inflatable lap belts to have two primary safety concerns: First, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

The inflatable lap belt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. Airbus must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable lap belt should

also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high-intensity radiated fields (HIRF). Existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are applicable. For compliance with those conditions, if inadvertent deployment could cause a hazard to the airplane, the inflatable lap belt is considered a critical system; if inadvertent deployment could cause injuries to persons, the inflatable lap belt should be considered an essential system. Finally, the inflatable lap-belt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

For an effective safety system, the inflatable lap belt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. The inflatable lap belt differs variously from traditional occupant-protection systems and requires special conditions to ensure adequate performance.

Because the inflatable lap belt is essentially a single-use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head-injury protection from the inflatable lap belt. Because an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lap belt useless if a larger impact follows the initial impact. This situation does not exist with energy-absorbing pads or upper-torso restraints, which tend to provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable lap belt installation should be such that the inflatable lap belt will provide protection when it is required, by not expending its protection during a less-severe impact. Also, it is possible to have several large impact events during the course of a crash, but there will be no requirement for the inflatable lap belt to provide protection for multiple impacts.

Because each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats and that unoccupied seats may have lap belts that are active.

The inflatable lap belt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants due to the nature of the lap-belt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, so it would not be necessary to show that the inflatable lap belt will enhance the brace position. However, the inflatable lap belt must not introduce a hazard when it is deployed into a seated, braced occupant.

Another area of concern is the use of seats, so equipped, by children whether they are lap-held, sitting in approved child-safety seats, or occupying the seat directly. Although specifically prohibited by the FAA operating regulations, the use of the supplementary loop belt (''belly belt'') may be required by other civil-aviation authorities, and should also be considered with the end goal of meeting those regulations. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Because the inflatable lap belt will be electrically powered, the system could possibly fail due to a separation in the fuselage. Because this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage

Because the inflatable lap belt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Because the bag deflates to absorb energy, it is likely that an inflatable lap belt would be deflated when persons try to leave their seats. Nonetheless, it is appropriate to specify a time interval after which the inflatable lap belt may not impede rapid egress. The maximum time allowed for an exit to open fully after actuation is ten seconds, according to § 25.809(b)(2). Therefore 10 seconds was chosen as the time interval that the inflatable lap belt must not impede rapid egress from the seat after it is deployed. In actuality, it is unlikely that an exit would be prepared by a flight attendant this quickly in an accident severe enough to warrant deployment of the inflatable lap belt. The inflatable lap belt will likely deflate much more quickly than 10 seconds.

This potential impediment to rapid egress is even more critical at the seats installed in the emergency-exit rows. Installation of the inflatable restraints at the Type III exit rows presents different egress concerns as compared with front-row seats. However, the need to address egress is already part of the special conditions so there is no change to the special conditions at this time. As noted below, the method of compliance with the special conditions may involve specific considerations when the inflatable restraint is installed at Type III exits. Section 25.813 clearly requires access to the exit from the main aisle in the form of an unobstructed passageway, and no interference in opening the exit. The restraint system must not create an impediment to the access to, and the opening of, the exit. These lap belts should be evaluated in the exit row under existing regulations (§§ 25.809 and 25.813) and guidance material. The inflatable lap belts must also be evaluated in post crash conditions, and should be evaluated using representative restraint systems in the bag-deployed condition.

This evaluation would include reviewing the access to, and opening of, the exit, specifically for obstructions in the egress path; and any interferences in opening the exit. Each unique interior configuration must be considered, e.g., passageway width, single or dual passageways with outboard seat removed, etc. If the restraint creates any obstruction or interference, it is likely that it could impede rapid egress from the airplane. In some cases, the passenger is the one who will open the exit, such as a Type III over-wing hatch. Project-specific means-of-compliance guidance is likely necessary if these restraint systems are installed at the Type III exit rows.

Finally, it should be noted that the special conditions are applicable to the inflatable lap-belt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is separate, and

must consider the combined effects of all such systems installed.

Airbus is proposing to install the following novel or unusual design feature of inflatable lap belts on certain seats of Airbus Model A340 series airplanes, to reduce the potential for head injury if an accident occurs. The inflatable lap belt works similar to an automotive inflatable air bag, except that the air bag in the Airbus design is integrated with the lap belt of the restraint system.

The performance criteria for head-injury protection in objective terms is stated in § 25.562. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lap belts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to the installation of seats with inflatable lap belts.

Accordingly, in addition to the passenger-injury criteria specified in § 25.785, these special conditions are proposed for the Airbus Model A340 series airplanes equipped with inflatable lap belts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil-aviation authorities.

For a passenger-safety system, the inflatable lap belt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with inflatable air bags, the conditions of use and reliance on the inflatable lap belt as the sole means of injury protection are quite different. In automobile installations, the air bag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and typically of shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.). Airplanes also operate where exposure to high-intensity radiated fields could affect the lap-belt activation system.

Part I of appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in appendix F, because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on material types as well as use, and have been specified in light of state-of-the-art materials available to perform a given function. Without a specific reference, the default requirement would apply to the type of material used in making the inflatable restraint, which is a fabric in this case. However, in writing a special condition, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Because the safety benefit of the inflatable restraint is very significant, the flammability standard appropriate for these devices should not screen out suitable materials and thereby effectively eliminate the use of inflatable restraints. The FAA must establish a balance between the safety benefit of the inflatable restraint and its flammability performance. Presently, the 2.5-inch-per-minute horizontal test is considered to provide that balance. As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable lap belts is a rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably more rigorous from a design standpoint.

Applicability

These special conditions are applicable to the Airbus Model A340 series airplanes. Should Airbus apply at a later date for a change to the type certificates to include another model that incorporates the same 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 as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A340 series airplanes. It is not a rule of general applicability, and it affects only Airbus Model A340 series airplanes listed on Type Certificate No. A43NM.

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 Airbus Model A340 series airplanes with inflatable lap belts installed.

1. The inflatable lap belt must be shown to deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lap belt must provide a consistent approach to energy absorption throughout that range of occupants. In addition, the following situations must be considered.

The seat occupant is:

- Holding an infant
- A child in a child-restraint device
- A child not using a child-restraint device
- A pregnant woman

2. The inflatable lap belt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lap belt from being either incorrectly buckled or incorrectly installed such that the inflatable lap belt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head-injury protection.

4. The inflatable lap-belt system must be shown not to be susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lap belt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys, and an occupant whose belt is loosely fastened.

6. An inadvertent deployment, that could cause injury to a standing or sitting person, must be shown to be improbable.

7. Inadvertent deployment of the inflatable lap belt, during the most critical part of the flight, must be shown to either not cause a hazard to the airplane or be extremely improbable.

8. The inflatable lap belt must be shown to not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lap-belt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lap belt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lap belt does not have to be considered.

11. The inflatable lap belt must be shown to not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lap-belt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. A means must be available for a crewmember to verify the integrity of the inflatable-lap-belt-activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

14. The inflatable material may not have an average burn rate of greater than 2.5 inches per minute when tested using the horizontal-flammability test as defined in 14 CFR part 25, appendix F, part I, paragraph (b)(5).

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26355 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM418; Special Conditions No. 25–395–SC]

Special Conditions: Airbus Model A330 Series Airplanes; Seats With Inflatable Lap Belts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Airbus Model A330 airplanes. These airplanes, manufactured by Airbus, will have novel or unusual design features associated with seats with inflatable lap belts. The FAA has issued similar special conditions addressing this issue for the Airbus Model A330 series airplanes. 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 November 3, 2009. We must receive your comments by December 18, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM418, 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. NM418. 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: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195, facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus 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. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

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 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 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 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, send us 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 September 23, 2008, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex, France, applied for a design change to Type Certificate No. A46NM for installation of inflatable lap belts in Airbus Model A330 series airplanes. These special conditions allow installation of inflatable lap belts for head-injury protection on certain seats in Airbus Model A330 series airplanes. The FAA has issued similar special conditions, No. 25–371–SC, on May 7, 2009, for Airbus Model A330 series airplanes. These airplanes, currently approved under Type Certificate No. A46NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, twin-aisle, large-sized, transport-category airplanes.

The inflatable lap belt is designed to limit occupant forward excursion if an accident occurs. This will reduce the

potential for head injury, thereby reducing the Head Injury Criterion (HIC) measurement, required by Title 14, Code of Federal Regulations (14 CFR), 25.562(c)(5). The inflatable lap belt behaves similarly to an automotive inflatable air bag, except that the air bag in the Airbus design is integrated into the lap belt and inflates away from the seated occupant. While inflatable air bags are now standard in the automotive industry, the use of an inflatable lap belt is novel for commercial aviation.

Title 14, Code of Federal Regulations (14 CFR) 121.311(j) requires that no person may operate a transport category airplane type certificated after January 1, 1958, and manufactured on or after October 27, 2009, in passenger-carrying operations, after October 27, 2009, unless all passenger and flight-attendant seats on an airplane operated under part 121 meet the requirements of § 25.562 in effect on or after June 16, 1988.

The Airbus Model A330 series airplanes, manufactured before October 27, 2009, operated under part 121, are required to comply with certain aspects of § 25.562 as specified per Type Certificate No. A46NM. Airbus Model A330 series airplanes manufactured on or after October 27, 2009, operated under part 121, must meet all of the requirements of § 25.562 for passenger and flight-attendant seats. The FAA advises installers to show full compliance with § 25.562 so that an operator, under part 121, may be able to use the airplane without having to do additional certification work. In addition, some foreign civil airworthiness authorities have invoked these same operator requirements in the form of airworthiness directives.

Occupants must be protected from head injury, as required by § 25.785, either by eliminating any injurious object within the striking radius of the head, or by installing padding. Traditionally, this has required either a setback of 35 inches from any bulkhead or other rigid interior feature or, where not practical, the installation of specified types of padding. The relative effectiveness of these established means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, specifically § 25.562, a new standard was created that quantifies required head-injury protection.

Each seat type design approved for crew or passenger occupancy during takeoff and landing, as required by § 25.562, must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that protection must be provided or the seat be designed so that the head impact does not exceed a HIC value of 1,000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head-injury protection be provided for passengers in a severe crash.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lap belts, the FAA recognizes that appropriate pass/fail criteria need to be developed that fully address the safety concerns specific to occupants of these seats.

Type Certification Basis

Under the provisions of § 21.101, Airbus must show that the A330 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46NM, 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. A46NM are as follows: 14 CFR part 25, as amended by Amendments 25–1 through 25–63, 25–65, 25–66, 25–68, 25–69, 25–73, 25–75, 25–77, 25–78, 25–81, 25–82, 25–84 and 25–85; certain regulations at Amendments 25–72 and 25–74; and Amendment 25–64 with exceptions. Refer to TCDS A46NM for a complete description of the certification basis for that model, including certain special conditions that are not relevant to these proposed special conditions.

If the regulations incorporated by reference do not contain adequate or appropriate safety standards for the Airbus Model A330 series airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A330 series 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 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

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

Airbus Model A330 series airplanes will incorporate the following novel or unusual design features: Seats with inflatable lap belts.

Discussion

The inflatable lap belt has two potential advantages over other means of head-impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, because such devices will likely provide a level of safety that exceeds the minimum standards of part 25. Conversely, inflatable lap belts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages to develop standards for this design feature.

The FAA has considered the installation of inflatable lap belts to have two primary safety concerns: First, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

The inflatable lap belt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. Airbus must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned

close to the inflatable lap belt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high-intensity radiated fields (HIRF). Existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are applicable. For compliance with those conditions, if inadvertent deployment could cause a hazard to the airplane, the inflatable lap belt is considered a critical system; if inadvertent deployment could cause injuries to persons, the inflatable lap belt should be considered an essential system. Finally, the inflatable lap-belt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

For an effective safety system, the inflatable lap belt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. The inflatable lap belt differs variously from traditional occupant-protection systems and requires special conditions to ensure adequate performance.

Because the inflatable lap belt is essentially a single-use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head-injury protection from the inflatable lap belt. Because an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lap belt useless if a larger impact follows the initial impact. This situation does not exist with energy-absorbing pads or upper-torso restraints, which tend to provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable lap belt installation should be such that the inflatable lap belt will provide protection when it is required, by not expending its protection during a less-severe impact. Also, it is possible to have several large impact events during the course of a crash, but there will be no requirement for the inflatable lap belt to provide protection for multiple impacts.

Because each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats and that unoccupied seats may have lap belts that are active.

The inflatable lap belt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants due to the nature of the lap-belt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, so it would not be necessary to show that the inflatable lap belt will enhance the brace position. However, the inflatable lap belt must not introduce a hazard when it is deployed into a seated, braced occupant.

Another area of concern is the use of seats, so equipped, by children whether they are lap-held, sitting in approved child-safety seats, or occupying the seat directly. Although specifically prohibited by the FAA operating regulations, the use of the supplementary loop belt (''belly belt'') may be required by other civil-aviation authorities, and should also be considered with the end goal of meeting those regulations. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Because the inflatable lap belt will be electrically powered, the system could possibly fail due to a separation in the fuselage. Because this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage.

Because the inflatable lap belt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Because the bag deflates to absorb energy, it is likely that an inflatable lap belt would be deflated when persons try to leave their seats. Nonetheless, it is appropriate to specify a time interval after which the inflatable lap belt may not impede rapid egress. The maximum time allowed for an exit to open fully after actuation is ten seconds, according to § 25.809(b)(2). Therefore 10 seconds was chosen as the time interval that the inflatable lap belt must not impede rapid egress from the seat after it is deployed. In actuality, it is unlikely that an exit would be prepared by a flight attendant this quickly in an accident severe enough to warrant deployment of the inflatable lap belt. The inflatable lap belt will likely deflate much more quickly than 10 seconds.

This potential impediment to rapid egress is even more critical at the seats installed in the emergency-exit rows. Installation of the inflatable restraints at the Type III exit rows presents different egress concerns as compared with front-row seats. However, the need to address egress is already part of the special conditions so there is no change to the special conditions at this time. As noted below, the method of compliance with the special conditions may involve specific considerations when the inflatable restraint is installed at Type III exits. Section 25.813 clearly requires access to the exit from the main aisle in the form of an unobstructed passageway, and no interference in opening the exit. The restraint system must not create an impediment to the access to, and the opening of, the exit. These lap belts should be evaluated in the exit row under existing regulations (§§ 25.809 and 25.813) and guidance material. The inflatable lap belts must also be evaluated in post crash conditions, and should be evaluated using representative restraint systems in the bag-deployed condition.

This evaluation would include reviewing the access to, and opening of, the exit, specifically for obstructions in the egress path; and any interferences in opening the exit. Each unique interior configuration must be considered, e.g., passageway width, single or dual passageways with outboard seat removed, etc. If the restraint creates any obstruction or interference, it is likely that it could impede rapid egress from the airplane. In some cases, the passenger is the one who will open the exit, such as a Type III over-wing hatch. Project-specific means-of-compliance guidance is likely necessary if these restraint systems are installed at the Type III exit rows.

Finally, it should be noted that the special conditions are applicable to the inflatable lap-belt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is separate, and

must consider the combined effects of all such systems installed.

Airbus is proposing to install the following novel or unusual design feature of inflatable lap belts on certain seats of Airbus Model A330 series airplanes, to reduce the potential for head injury if an accident occurs. The inflatable lap belt works similar to an automotive inflatable air bag, except that the air bag in the Airbus design is integrated with the lap belt of the restraint system.

The performance criteria for head-injury protection in objective terms is stated in § 25.562. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lap belts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to the installation of seats with inflatable lap belts.

Accordingly, in addition to the passenger-injury criteria specified in § 25.785, these special conditions are proposed for the Airbus Model A330 series airplanes equipped with inflatable lap belts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil-aviation authorities.

For a passenger-safety system, the inflatable lap belt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with inflatable air bags, the conditions of use and reliance on the inflatable lap belt as the sole means of injury protection are quite different. In automobile installations, the air bag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and typically of shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.). Airplanes also operate where exposure to high-intensity radiated fields could affect the lap-belt activation system.

Part I of appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in appendix F, because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on material types as well as use, and have been specified in light of state-of-the-art materials available to perform a given function. Without a specific reference, the default requirement would apply to the type of material used in making the inflatable restraint, which is a fabric in this case. However, in writing a special condition, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Because the safety benefit of the inflatable restraint is very significant, the flammability standard appropriate for these devices should not screen out suitable materials and thereby effectively eliminate the use of inflatable restraints. The FAA must establish a balance between the safety benefit of the inflatable restraint and its flammability performance. Presently, the 2.5-inch-per-minute horizontal test is considered to provide that balance. As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable lap belts is a rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably more rigorous from a design standpoint.

Applicability

These special conditions are applicable to the Airbus Model A330 series airplanes. Should Airbus apply at a later date for a change to the type certificates to include another model that incorporates the same 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 as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A330 series airplanes. It is not a rule of general applicability, and it affects only Airbus Model A330 series airplanes listed on Type Certificate No. A46NM.

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 Airbus Model A330 series airplanes with inflatable lap belts installed.

1. The inflatable lap belt must be shown to deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lap belt must provide a consistent approach to energy absorption throughout that range of occupants. In addition, the following situations must be considered.

The seat occupant is:

- Holding an infant
- A child in a child-restraint device
- A child not using a child-restraint device
- A pregnant woman

2. The inflatable lap belt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lap belt from being either incorrectly buckled or incorrectly installed such that the inflatable lap belt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head-injury protection.

4. The inflatable lap-belt system must be shown not to be susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lap belt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys, and an occupant whose belt is loosely fastened.

6. An inadvertent deployment, that could cause injury to a standing or sitting person, must be shown to be improbable.

7. Inadvertent deployment of the inflatable lap belt, during the most critical part of the flight, must be shown to either not cause a hazard to the airplane or be extremely improbable.

8. The inflatable lap belt must be shown to not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lap-belt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lap belt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lap belt does not have to be considered.

11. The inflatable lap belt must be shown to not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lap-belt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. A means must be available for a crewmember to verify the integrity of the inflatable-lap-belt-activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

14. The inflatable material may not have an average burn rate of greater than 2.5 inches per minute when tested using the horizontal-flammability test as defined in 14 CFR part 25, appendix F, part I, paragraph (b)(5).

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26356 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1312; Directorate Identifier 2008–CE–065–AD; Amendment 39–16072; AD 2009–23–01]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Model 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Models 1900, 1900C, and 1900D airplanes. This AD requires a one-time visual inspection and repetitive ultrasonic inspections of the left and right main landing gear (MLG) actuators for leaking and/or cracks with replacement of the actuator if leaking and/or cracks are found. This AD results from reports of leaking and cracked actuators. We are issuing this AD to detect and correct leaking and cracks in the MLG actuators, which could result in loss of hydraulic fluid. This condition could lead to an inability to extend or lock down the landing gear, which could result in a gear up landing or a gear collapse on landing.

DATES: This AD becomes effective on December 8, 2009.

On December 8, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; Internet: *http://pubs.hawkerbeechcraft.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2008–1312; Directorate Identifier 2008–CE–065–AD.

FOR FURTHER INFORMATION CONTACT: Don Ristow, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4120; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On August 20, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Hawker Beechcraft Corporation Models 1900, 1900C, and 1900D airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on August 31, 2009 (74 FR 44773). The NPRM proposed to require a one-time visual inspection and repetitive ultrasonic inspections of the left and right main landing gear (MLG) actuators for leaking and/or cracks with replacement of the actuator if leaking and/or cracks are found.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Superseding Previous ADs

Hawker Beechcraft Corporation requests that with this AD action we supersede AD 99–04–08 and AD 97–26–15, which affect earlier configurations of part number 114–380041 MLG actuator. They believe that one AD correcting all of the unsafe conditions concerned with the MLG actuator would eliminate confusion concerning which AD to comply with.

The FAA disagrees. We did consider supersedure of the previous two ADs, AD 99–04–08 and AD 97–26–15. The previous two ADs and this new AD action each address different unsafe conditions on the MLG actuators. AD 99–04–08 concerns lubrication and replacement of the rod end, and AD 97–26–15 concerns replacement of the actuator head end cap. This new AD action concerns replacement of the rod end cap. AD 99–04–08 uses a prorated time of compliance starting with actuators that have accumulated 6,000 hours time-in-service and may still apply to low usage aircraft or aircraft that have been in storage. This current AD action specifies compliance based on actuator cycles. The only common feature in the three ADs is that the actuators were manufactured by Frisby Airborne Hydraulic, Inc.

Based on the differences in the two previous ADs and in this new AD, we determined that combining the three into a single AD would confuse the unsafe conditions, rather than simplify them. If combined into one AD, each unsafe condition would still have different inspections, different

replacements, and different compliance times. To incorporate those differences into a single AD would create a complicated AD to understand. By keeping the AD actions separate, the corrective actions for each unsafe condition can be complied with individually. For these reasons, we decided a new AD action would be appropriate.

We will not change the final rule AD action based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 300 airplanes in the U.S. registry.

The ultrasonic inspection includes the time allowed for removing and reinstalling the actuator. We estimate the following costs to do the inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Visual Inspection: .5 work-hour × $80 per hour = $40	Not applicable	$40	$12,000
Ultrasonic Inspection: 6 work-hours × $80 per hour = $480 (If the mechanic does not remove the actuator for the ultrasonic inspection, the labor cost will be less.).	Not applicable	480	144,000

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspections. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
6 work-hours × $80 per hour = $480 (If the mechanic removes the actuator for the ultrasonic inspection, then the labor cost will be less.).	$4,600 per actuator	$5,080

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–1312; Directorate Identifier 2008–CE–065–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2009–23–01 Hawker Beechcraft Corporation: Amendment 39–16072; Docket No. FAA–2008–1312; Directorate Identifier 2008–CE–065–AD.

Effective Date

(a) This AD becomes effective on December 8, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplane models and serial numbers listed below that are certificated in any category and equipped with a Hawker Beechcraft part number (P/N) 114–380041–11 (or FAA-approved equivalent P/N), 114–380041–13 (or FAA-approved equivalent P/N), 114–380041–15 (or FAA-approved equivalent P/N), or 114–380041–15OVH main landing gear (MLG) actuator. For the purposes of this AD action the phrase ''or FAA-approved equivalent part number'' in this AD refers to any PMA part that is approved by identicality to the referenced part. Frisby Airborne Hydraulic, Inc. (Frisby) P/N 1FA10043–3 has parts manufacturer approval (PMA) by identicality to P/N 114–380041–15; therefore, it is considered an FAA-approved equivalent P/N and the AD applies to airplanes with this part installed.

Models	Serial Nos.
(1) 1900	UA–3.
(2) 1900C	UB–1 through UB–74, UC–1 through UC–174, and UD–1 through UD–6.
(3) 1900D	UE–1 through UE–439.

Unsafe Condition

(d) This AD results from reports of leaking and cracked actuators. We are issuing this AD to detect and correct leaking and cracks in the MLG actuators, which could result in loss of hydraulic fluid. This condition could lead to an inability to extend or lock down the landing gear, which could result in a gear up landing or a gear collapse on landing.

Compliance

(e) To address this problem, you must do the following, unless already done:

Note: The phrase ''or FAA-approved equivalent part number'' in this AD refers to any PMA part that is approved by identicality to the referenced part.

Actions	Compliance	Procedures
(1) Do a one-time visual inspection of the MLG actuator for cracks.	Within the next 50 hours time-in-service after December 8, 2009 (the effective date of this AD) or within the next 30 days after December 8, 2009 (the effective date of this AD), whichever occurs later.	(i) For Hawker Beechcraft parts: Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008. (ii) For PMA by identicality: Either contact the aircraft certification office (ACO) using the contact information in paragraph (g)(1) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008, and follow any inspection required by this AD.
(2) Do an initial ultrasonic inspection of the MLG actuator.	Initially within the next 600 cycles after December 8, 2009 (the effective date of this AD) or within the next 3 months after December 8, 2009 (the effective date of this AD), whichever occurs first. (i) For those airplanes with overhauled MLG actuators (with less than 1,200 cycles) that have records that prove an internal fluorescent penetrant inspection has been done, you may do the initial ultrasonic inspection within the next 600 cycles after December 8, 2009 (the effective date of this AD) or within the next 1,200 cycles since the last overhaul, whichever occurs later. (ii) For those airplanes with MLG actuators with less than 8,000 cycles since new or MLG actuators that have records that prove the end caps are new (less than 8,000 cycles), you may do the initial ultrasonic inspection within the next 1,200 cycles after December 8, 2009 (the effective date of this AD) or upon accumulation of 8,000 cycles since the end caps were new, whichever occurs later.	(A) For Hawker Beechcraft parts: Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008. (B) For PMA by identicality: Either contact the ACO using the contact information in paragraph (g)(1) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008, and follow any inspection required by this AD.
(3) For all airplanes, do repetitive ultrasonic inspections of the MLG actuator.	Repetitively at intervals not to exceed every 1,200 cycles since the last ultrasonic inspection.	(i) For Hawker Beechcraft parts: Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008. (ii) For PMA by identicality: Either contact the ACO using the contact information in paragraph (g)(1) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008, and follow any inspection required by this AD.

Actions	Compliance	Procedures
(4) If cracks are found during any inspection required in paragraph (e)(1), (e)(2), and (e)(3) of this AD, replace the MLG actuator with one of the following: (i) MLG actuator P/N 114–380041–15 (or FAA-approved equivalent P/N) or 114–380041–15OVH that is new or has been inspected following paragraphs (e)(1), (e)(2), and (e)(3) of this AD and has been found to not have cracks; or (ii) An FAA-approved actuator. Installation of an MLG actuator P/N other than 114–380041–11 (or FAA-approved equivalent P/N), 114–380041–13 (or FAA-approved equivalent P/N), 114–380041–15 (or FAA-approved equivalent P/N), or 114–380041–15OVH terminates the inspection requirements of paragraphs (e)(1), (e)(2), and (e)(3) of this AD.	Before further flight after the inspection where the cracks are found.	(A) For Hawker Beechcraft parts: Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008. (B) For PMA by identicality: Either contact the ACO using the contact information in paragraph (g)(1) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008, and follow any inspection required by this AD.
(5) Do not install any MLG actuator P/N 114–380041–11 (or FAA-approved equivalent P/N) or 114–380041–13 (or FAA-approved equivalent P/N).	As of December 8, 2009 (the effective date of this AD).	Not applicable.

(f) If the number of cycles is unknown, calculate the compliance times of cycles in this AD by using hours time-in-service (TIS). Multiply the number of hours TIS on the MLG actuator by 4 to come up with the number of cycles. For the purposes of this AD:

(1) 600 cycles equals 150 hours' TIS; and

(2) 1,200 cycles equals 300 hours' TIS.

(g) If cracks are found during any inspection required in paragraphs (e)(1), (e)(2), or (e)(3) of this AD, report the size and location of the cracks to the FAA within 10 days after the cracks are found or within 10 days after December 8, 2009 (the effective date of this AD), whichever occurs later.

(1) Send report to Don Ristow, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; e-mail: *donald.ristow@faa.gov.*

(2) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Don Ristow, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4120; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(i) You must use Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; Internet: *http://pubs.hawkerbeechcraft.com.*

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

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

Issued in Kansas City, Missouri, on October 23, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26199 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0999; Directorate Identifier 2009–NM–155–AD; Amendment 39–16069; AD 2008–04–19 R1]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42 and ATR72 Airplanes

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

ACTION: Final rule; request for comments.

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.

* * * * *

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or

practices are not performed in accordance with the manufacturers' requirements.

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

DATES: This AD becomes effective November 18, 2009.

On April 3, 2008 (73 FR 10652, February 28, 2008), the Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD.

We must receive comments on this AD by December 18, 2009.

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

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

For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; e-mail *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On February 15, 2008, we issued AD 2008–04–19, Amendment 39–15391 (73 FR 10652, February 28, 2008). That AD applied to all ATR Model ATR42–200, –300, –320, and –500 airplanes; and all ATR Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes. That AD required revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS. But once the CDCCLs are incorporated into the ALS, future maintenance actions on components must be done in accordance with those CDCCLs.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. We are issuing this AD to revise AD 2008–04–19. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components. We have renumbered subsequent notes accordingly.

Explanation of Additional Change to AD

AD 2008–04–19 allowed the use of alternative inspections, inspection intervals, and CDCCLs if they are part of a later revision of the ATR 42–200/–300/–320 Maintenance Review Board Report (MRBR), Revision 7, dated March 31, 2006; ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or ATR 72 MRBR, Revision 8, dated March 26, 2007. That provision has been removed from this AD. Allowing the use of ''a later revision'' of a specific service document violates Office of the Federal Register policies for approving materials that are incorporated by reference. Affected operators, however, may request approval to use an alternative inspection, inspection interval, or CDCCL that is part of a later revision of the referenced service documents as an alternative method of compliance, under the provisions of paragraph (g) of this AD.

Differences Between the AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that this AD will affect about 84 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,720, or $80 per product.

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and

makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0999; Directorate Identifier 2009–NM–155–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15391 (73 FR 10652, February 28, 2008) and adding the following new AD:

2008–04–19 R1 ATR—GIE Avions de Transport Régional (Formerly Aerospatiale): Amendment 39–16069. Docket No. FAA–2009–0999; Directorate Identifier 2009–NM–155–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2009.

Affected ADs

(b) This AD revises AD 2008–04–19, Amendment 39–15391.

Applicability

(c) This AD applies to all ATR Model ATR 42–200, –300, –320, and –500 airplanes; and all ATR Model ATR 72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (*see* EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems.

Restatement of AD 2008–04–19 With Changes to Compliance Method

Actions and Compliance

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

(1) Within 3 months after April 3, 2008 (the effective date of AD 2008–04–19), revise the ALS of the ICA to incorporate Task 28.10.00 ''Fuel Tank—General,'' and Task 28.20.00 ''Distribution,'' of the Certification Maintenance Requirements (CMR) Section of the Time Limits Section of Part 1 of the ATR 42–200/–300/–320 Maintenance Review Board Report (MRBR), Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable. For all tasks identified in the applicable MRBR, the initial compliance times start from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, except as provided by paragraphs (f)(3) and (g) of this AD. The repetitive inspections must be accomplished thereafter at the interval specified in the applicable MRBR.

(i) April 3, 2008.

(ii) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(2) Within 3 months after April 3, 2008, revise the ALS of the ICA to incorporate the CDCCLs as defined in Section 4., ''Critical Design Configuration Control List,'' of the Airworthiness Limitations Section of the Time Limits Section of Part 1 of the ATR 42–200/–300/–320 MRBR, Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable.

(3) For the task titled ''Detailed visual inspection of the fuel tanks and associated equipment, wiring, piping and braids'' (CMR task reference 28.10.00–1): The initial compliance time is the later of the times specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD. Thereafter, the task titled ''Detailed visual inspection of the fuel tanks and associated equipment, wiring, piping and braids'' must be accomplished at the repetitive interval specified in Section 4., ''Critical Design Configuration Control List,'' of the Airworthiness Limitations Section of the Time Limits Section of Part 1 of the ATR 42–200/–300/–320 MRBR, Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable.

(i) Within 144 months since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(ii) Within 72 months or 20,000 flight hours after April 3, 2008, whichever occurs first.

(4) After accomplishing the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC), in accordance with the procedures specified in paragraph (g) of this AD.

New Information

Explanation of CDCCL Requirements

Note 2: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS, as required by paragraph (f) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0219R1, dated June 29, 2007, and the service information identified in Table 1 of this AD, for related information.

TABLE 1—SERVICE INFORMATION

Document	Revision level	Date
Time Limits Section of Part 1 of the ATR 42–200/–300/–320 Maintenance Review Board Report	7	March 31, 2006.
Time Limits Section of Part 1 of the ATR 42–400/–500 Maintenance Review Board Report	6	March 26, 2007.
Time Limits Section of Part 1 of the ATR 72 Maintenance Review Board Report	8	March 26, 2007.

Material Incorporated by Reference

(i) You must use the applicable service information contained in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision level	Date
Time Limits Section of Part 1 of the ATR 42-200/-300/-320 Maintenance Review Board Report	7	March 31, 2006.
Time Limits Section of Part 1 of the ATR 42-400/–500 Maintenance Review Board Report	6	March 26, 2007.
Time Limits Section of Part 1 of the ATR 72 Maintenance Review Board Report	8	March 26, 2007.

(1) The Director of the Federal Register previously approved the incorporation by reference of this service information on April 3, 2008 (73 FR 10652, February 28, 2008).

(2) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; e-mail *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on October 22, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26289 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1362; Directorate Identifier 2008–NM–150–AD; Amendment 39–16067; AD 2009–22–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and 747–200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–200C and 747–200F series airplanes. This AD requires installing larger moisture shrouds and additional drain lines in the electrical/electronic equipment center. This AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are issuing this AD to prevent water contamination in the electrical/electronic units in the main equipment center, which could result in an electrical short and potential loss of several functions essential for safe flight.

DATES: This AD is effective December 8, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 8, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747–200C and 747–200F series airplanes. That NPRM was published in the **Federal Register** on January 12, 2009 (74 FR 1158). That NPRM proposed to require installing larger moisture shrouds and additional drain lines in the electrical/electronic equipment center.

Actions Since NPRM Was Issued

Paragraph (g) of the NPRM cited Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007, as the appropriate source of service information for the prior or concurrent action for the proposed installation; Boeing has revised this service bulletin. Boeing Service Bulletin 747–25A3430, Revision 1, dated October 9, 2008, moves certain airplanes to new groups 5 and 6, and adds respective weight and balance tables, materials, parts, and work instructions and figures, but does not add any new procedures. We have revised paragraph (g) of the final rule to refer to Boeing Service Bulletin 747–25A3430, Revision 1, dated October 9, 2008, and added new paragraph (h) to this AD to give credit for accomplishing the original service bulletin before the effective date of this AD. We have re-identified subsequent paragraphs accordingly. We have also revised Note 1 of this AD to refer to Revision 1.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the two commenters.

Request for Terminology Clarification

Boeing requests that we change the phrase ''reworking the base line (BL) 11 intercostals'' found in the Relevant Service Information section to ''reworking the butt line (BL) 11 intercostals.'' Boeing recommends using standard aerospace terminology for geometric dimensioning.

We partially agree. The language Boeing proposes is the correct terminology, but the Relevant Service Information section in the NPRM is not repeated in the final rule. We have not changed the AD in this regard.

Request To Change Affected Airplanes

Boeing requests that we revise the Costs of Compliance section of the NPRM to change the number of affected U.S. airplanes from 25 to 31. Current analysis of the Boeing Airplane Configuration Tracking System airplane database indicates 31 airplanes are affected.

We agree, for the reason explained by the commenter. We have revised this final rule accordingly.

Request for No Requirement of Re-Installation of Curtains

Northwest Airlines (Northwest) requests that we consider not requiring re-installation of curtains after accomplishing shroud installation per the instructions of Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008. Northwest explains that since 2001, it has operated two 747 freighters with the extended overhead moisture shrouds (similar to those installed per Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008) that had been installed during a passenger-to-freighter conversion but did not have the curtains installed. Northwest explains that service experience on the

two airplanes showed that there were no moisture ingress problems.

We disagree with the request. While Northwest may not have experienced moisture ingress problems on its two airplanes that have been operating without curtains, we cannot mandate fleet-wide action on data from two airplanes. The AD is intended to prevent water contamination in the electrical/electronic main equipment center of the fleet. However, under the provisions of paragraph (i) of this AD, Northwest may request an alternative method of compliance if it can provide data that substantiate the request. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that the changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this proposed AD would affect 31 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installations	Up to 75	$80	Up to $28,405	Up to $34,405	31	Up to $1,066,555.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–22–14 Boeing: Amendment 39–16067. Docket No. FAA–2008–1362; Directorate Identifier 2008–NM–150–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 8, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–200C and 747–200F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008.

Unsafe Condition

(d) This AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are issuing this AD to prevent water contamination in the electrical/electronic units in the main equipment center, which could result in an electrical short and potential loss of several functions essential for safe flight.

Compliance

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

Installation of Shrouds and Drain Lines

(f) Within 72 months after the effective date of this AD, install larger moisture shrouds and additional drain lines, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008.

Installation of Moisture Curtains

(g) Prior to or concurrently with accomplishing the actions required by paragraph (f) of this AD: Install protective moisture curtains in the main equipment center in accordance with Boeing Service Bulletin 747–25A3430, Revision 1, dated October 9, 2008.

Note 1: The installation required by paragraph (g) of this AD is the same installation required by paragraph (f) of AD 2007–26–03, amendment 39–15305, for Boeing Model 747–200C and –200F series airplanes (AD 2007–26–03 specifies that the actions be done in accordance with Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007). Boeing Service Bulletin 747–25A3430, Revision 1, dated October 9, 2008, which affects Boeing Model 747–200F airplanes, variable numbers RR566 and RR551 through RR556 inclusive, is an alternative method of compliance for the requirements of paragraph (g) of AD 2007–26–03. Airplanes identified as Group 1, Group 3, and Group 6 airplanes in Boeing Service Bulletin 747–25A3430, Revision 1, dated October 9, 2008, must comply with paragraph (g) of AD 2007–26–03.

Installations Accomplished According to Previous Issue of Service Bulletin

(h) Installations accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007, are considered

acceptable for compliance with the corresponding action, paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008; and Boeing Service Bulletin 747–25A3430, Revision 1, dated October 9, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25918 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB23

Administrative Offset Under Reciprocal Agreements With States

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule describes the rules applicable to the offset of Federal nontax payments to collect delinquent debts owed to States pursuant to reciprocal agreements between the Secretary of the Treasury and the States. In addition to providing for the offset of Federal nontax payments, the reciprocal agreements provide for the offset of State payments to collect delinquent, nontax Federal debts. The offsets described in this rule are processed by the Treasury Offset Program (TOP), which the Department of the Treasury's Financial Management Service (FMS) established to centralize the process by which Federal payments are withheld or reduced (in other words, offset) to collect delinquent debts.

DATES: This rule is effective November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Senior Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Counsel, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Improvement Act of 1996 DCIA), Public Law 104–134, 110 Stat. 1321–358 *et seq.* (April 26, 1996), authorized Federal disbursing officials to withhold or reduce eligible Federal payments to pay the payee's delinquent debt owed to the United States. See 31 U.S.C. 3716(c). This process is known as ''administrative offset'' or ''offset.'' The DCIA also provided that Federal payments may be offset to collect delinquent debts owed to States provided that the States enter into reciprocal agreements with the Secretary of the Treasury and meet certain other qualifications. See 31 U.S.C. 3716(h). Section 3716(h) authorizes the Secretary of the Treasury to allow States to participate in administrative offset to collect delinquent State debts so long as the States meet the requirements of 31 U.S.C. 3716(h), including entering into reciprocal agreements with the Secretary of the Treasury. Such reciprocal agreements shall contain any requirements that the Secretary considers appropriate, to facilitate offset and prevent duplicative efforts.

On January 11, 2007, FMS issued an interim rule with request for comments that established the reciprocal offset program with States through TOP. See 72 FR 1283. In that interim rule, FMS also described the pilot program that was initiated in June 2007. The purpose of the pilot program was to determine if it is in the best interests of the United States and the States to fully implement reciprocal offsets under this section. FMS invited the States to participate in the pilot program, and two States participated. The purposes of the pilot were to test offset systems and procedures and to evaluate whether the benefits of the program outweigh the costs. In the interim rule, FMS indicated it would consider information gained from the operation of the pilot, in addition to comments received on the interim rule, before issuing a final rule.

Based upon the results of the pilot program, FMS has determined that it is in the best interests of the United States to continue with the reciprocal offset program with the States with some changes set forth in this final rule.

II. Discussion of Comments and Results of the Pilot Public Comments

FMS received comments from one association of auditors, comptrollers, and treasurers. Following is a discussion of the substantive issues raised in the comments.

1. Limitations on Payments Available for Offset To Collect State Debts

The commenter noted that TOP processes offsets of many payments that are not available for offset to collect State debts. Among those payments are federal tax refunds, social security payments, and federal salary payments. The statute authorizing reciprocal offsets under this section expressly excludes offset of federal tax refunds and social security benefit payments. See 31 U.S.C. 5 3701(d)(1) and 3716(h)(3), respectively. Therefore, offset of those payments is beyond the scope of this rule. In addition, as noted in the interim rule, there are many statutes and regulations that affect federal salary offset, including statutes administered by other federal agencies such as the Office of Personnel Management. *See* 72 FR 1284. Such laws contain additional requirements for offset of federal salary payments, including the requirement that federal employees have an opportunity for a hearing by an authority not under the control of the creditor agency. *See* 5 CFR 550.1104(d)(7). The additional legal

requirements also have an impact on operations of both the States and the Federal Government. For these reasons, FMS decided not to include administrative offset of federal salary payments in this rule.

2. Fees

The commenter noted that the rule provides for FMS to charge a fee to the States to recoup FMS's administrative costs, while not providing for the States to charge 5515 for their administrative costs. The commenter encouraged FMS to include a provision for the States to charge a fee in the reciprocal agreements. The DCIA authorizes FMS to charge creditor agencies a fee sufficient to cover the full cost of implementing administrative offsets. See 31 U.S.C. 3716(c)(4). There is no authority for States to charge FMS a fee or for FMS to pay a fee to the States. Therefore, it would be beyond FMS's authority to include a provision for a fee in this rule or in the reciprocal agreements.

3. State Legislation

The commenter noted that States may have to pass legislation to allow officials other than the governor to sign a reciprocal agreement and to authorize offset of State payments to collect delinquent federal debts. FMS anticipates that all States wishing to participate in the program authorized by this rule will have to enact legislation. Both of the States participating in the pilot program passed legislation in order to implement the program. FMS worked closely with those States to ensure that the legislative language would be sufficient. FMS will continue to assist participating States in that effort.

4. Requirement for a Reciprocal Agreement

The commenter expressed concern that use of the program may be hindered by the need for a reciprocal agreement in States where debt collection is not centralized. A reciprocal agreement with the State is a statutory requirement. See 31 U.S.C. 3716(h)(1)(B). This rule, therefore, is only repeating the requirement contained in the statute. To the extent this comment is intended to address any requirements in the reciprocal agreements that the States centralize offset operations, such issues are not within the scope of this rule. Section 3716(h)(1)(B) authorizes FMS to include in the reciprocal agreements any requirements which it considers appropriate to facilitate the offset and prevent duplicative efforts. FMS has chosen not to include the detailed operational requirements of the reciprocal agreements in this rule, thus preserving the flexibility to prescribe such terms as may be deemed appropriate in the future. This rule, therefore, only sets forth the basic parameters for the reciprocal agreements between FMS and the States.

Results of the Pilot Program

The pilot commenced in June 2007. Two States—Maryland and New Jersey—participated. Collection results indicate that the program benefited the States as well as the federal agencies. The implementation costs for each of the two participating States were approximately $1 million. As of July 31, 2008, Maryland had collected over $19 million, and New Jersey had collected over $14 million.

The estimated implementation costs for TOP were $230,000 and for the federal agencies were $100,000. As of July 31, 2008, TOP had collected a total of $5,495,163.28 of federal nontax debts from the payments made by Maryland and New Jersey.

While the benefit to the States greatly exceeds the benefits to the Federal government, the program is nonetheless a beneficial collection tool for federal agencies. FMS has, therefore, determined that the program should continue.

In addition to evaluating the financial benefits of the reciprocal offset program, FMS analyzed the legal requirements for participation in the program. In the interim rule, FMS imposed an extra due process requirement on the States for debts they had submitted for offset under section 285.8 of this part. See paragraph (f) of this section, ''Debts previously submitted by States for tax refund offset.'' Prior to the pilot, if a State had already submitted a debt to TOP for purposes of federal tax refund offset, the State was not required to send out another advance due process notice informing the debtor that additional federal payments would be subject to offset to collect that debt. However, under the interim rule, a State was required to send out a post-offset due process notice if a federal payment was offset under this section. A comparable requirement for post-offset notice was imposed on federal agencies, under the reciprocal agreements, if a State payment was offset to collect a federal debt that had been submitted for offset prior to promulgation of the interim rule.

The extra notice required by paragraph (f) of the interim rule is not required by statute. FNS imposed this additional notice requirement solely because the program was new, and it was unknown if there might be significant numbers of debtors who would claim that they would have availed themselves of their due process rights earlier if they had known that State payments would be subject to offset. Such claims did not emerge during the pilot, and the post-offset notice requirement places an unnecessary administrative obligation on States without any resulting benefit to debtors. FMS has therefore determined that this additional notice is no longer necessary. Accordingly, paragraph (f) has been modified to delete the requirement for any post-offset due process notice.

III. Procedural Analysis

Administrative Procedures Act

FMS has determined that good cause exists to make this final rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. This final rule makes only minor changes to the currently effective interim final rule and provides guidance that is expected to facilitate States' participation in the reciprocal offset program. Therefore, FMS believes that good cause exists, and that it is in the public interest, to make this final rule effective upon publication.

Regulatory Planning and Review

The rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

■ For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

■ 2. Revise § 285.6, paragraph (f), to read as follows:

285.6 Administrative offset under reciprocal agreements with states.

* * * * *

(f) *State debts submitted to FMS for tax refund offset.* A State shall be deemed to have complied with the requirements of paragraph (e)(2) of this section with respect to any State debt that the State certified to Treasury for collection pursuant to § 285.8 of this part.

* * * * *

Dated: October 23, 2009.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–26303 Filed 11–2–09; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2009–0021; FRL–8972–7]

RIN 2060–AP46

Administrative Stay of Clean Air Interstate Rule for Minnesota; Administrative Stay of Federal Implementation Plan To Reduce Interstate Transport of Fine Particulate Matter and Ozone for Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule administratively stays the effectiveness, for Minnesota and Minnesota sources only, of two rules issued under section 110 of the Clean Air Act (CAA) related to the interstate transport of pollutants. On May 12, 2005, EPA issued the Clean Air Interstate Rule (CAIR) requiring Minnesota and other states in the eastern U.S. to submit State Implementation Plan (SIP) revisions to limit sulfur dioxide (SO_2) and nitrogen oxides (NO_X) emissions in order to eliminate the significant contribution of these states to nonattainment for fine particulate matter ($PM_{2.5}$) and/or ozone, and eliminates interference with maintenance of attainment, in downwind states. On April 28, 2006, EPA issued Federal Implementation Plans (CAIR FIPs) to serve as a backstop until replaced by approved SIPs. Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit reversed and remanded CAIR. Among other things, the Court held that EPA had not properly addressed possible errors in analysis supporting the inclusion of Minnesota in CAIR for fine particulate matter. In this final rule, EPA is administratively staying the effectiveness of CAIR and the CAIR FIP with respect to Minnesota and sources in Minnesota only, pending further rulemaking in response to the remand.

DATES: The effective date of this final rule is December 3, 2009.

ADDRESSES: *Docket:* EPA has established a docket for this final rule under Docket ID No. EPA–HQ–OAR–2009–0021. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jeb Stenhouse, Program Development Branch, Clean Air Markets Division, Office of Atmospheric Programs, Mail Code 6204J, Environmental Protection Agency, Washington, DC 20460, telephone number 202–343–9781, fax number 202–343–2359, and e-mail address *stenhouse.jeb@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

I. Background
II. What Is the Scope of this Final Rule?
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review

I. Background

Section 110(a)(2)(D)(i)(I) of the CAA requires that a state's SIP prohibit emissions by any source or other type of emissions activity in the state that will ''contribute significantly to nonattainment in, or interfere with maintenance by, any other State'' with respect to any national ambient air quality standard (NAAQS). 42 U.S.C. 7410(a)(2)(D)(i)(I). On May 12, 2005, EPA issued CAIR (70 FR 25162, May 12, 2005). In that rule, EPA found that 28 states and Washington, DC contribute significantly to nonattainment, and interfere with maintenance, of the NAAQS for fine particulate matter and/or ozone in downwind states. CAIR required these upwind states to revise their SIPs to include control measures to reduce emissions of SO_2 and/or NO_X and thereby meet the requirements of section 110(a)(2)(D)(i)(I). One of the states included in CAIR for fine particulate matter, but not for ozone, was the State of Minnesota. Minnesota was thus required to reduce annual SO_2 and annual NO_X emissions in accordance with the requirements of the rule. Further, in CAIR, EPA offered to administer, as a remedy through which states could comply with CAIR, SO_2 annual, NO_X annual, and NO_X ozone season trading programs that states could choose to incorporate in their SIPs. CAIR included model rules for these trading programs and provided that states could adopt the model rules in their SIPs and thereby incorporate the trading programs in the SIPs.

On April 28, 2006, EPA issued the CAIR FIPs (71 FR 25330, April 28 2006). In the April 28, 2006, notice, EPA promulgated FIPs to implement the emission reduction requirements of CAIR in each state covered by CAIR until the FIP is replaced by an approved SIP. EPA issued the CAIR FIPs to provide a federal backstop for CAIR. EPA decided to adopt as the FIP for

each state in the CAIR region (including Minnesota) the SIP model trading programs in CAIR, modified slightly to allow for federal, instead of state, implementation.

A number of petitioners brought legal challenges to several aspects of CAIR and of the CAIR FIPs in the U.S. Court of Appeals for the District of Columbia Circuit. Among the parties challenging the rule was Minnesota Power, an electric utility operating in Minnesota, who argued that EPA erred in the analysis of the contribution of Minnesota sources to downwind nonattainment and thus in including Minnesota in CAIR for fine particulate matter.

On July 11, 2008, in *North Carolina* v. *EPA,* 531 F.3d 896, 926–30 (DC Cir. 2008), the D.C. Circuit ruled on these challenges and vacated and remanded CAIR and the CAIR FIPs. Of particular relevance here, the Court granted Minnesota Power's petition and remanded to EPA the issue of the inclusion of Minnesota and Minnesota sources in CAIR and the CAIR FIPs because the Court concluded that EPA had failed to fully address alleged errors in its contribution analysis for Minnesota. *Id.* at 926–27. In addition, the Court granted petitions of several other parties and remanded to EPA issues concerning: EPA's interpretation of the requirement in section 110(a)(2)(D)(i)(I) that SIPs must prohibit ''interference with maintenance'' with respect to any NAAQS (*id.* at 909–11); the lawfulness of the CAIR trading programs for NO_X and SO_2 as a remedy that will assure that States abate emissions that significantly contribute to downwind nonattainment or interfere with maintenance (*id.* at 907–8); the 2015 deadline for states to remedy their failure to eliminate their significant contribution (*id.* at 911–12); the SO_2 and NO_X budgets used for the trading programs (*id.* at 916–21); and EPA's authority to terminate or limit Title IV allowances through a trading program under section 110(a)(2)(D)(i)(I) or through a requirement that, to comply with section 110(a)(2)(D)(i)(I), SIPs have Title IV allowance retirement provisions (*id.* at 921–22).

On September 24, 2008, EPA filed a petition for rehearing with the DC Circuit. This petition sought rehearing of a number of the Court's findings, but did not seek rehearing of the findings regarding Minnesota. On October 31, 2008, EPA sent a letter to Minnesota Power indicating its intent to stay the effectiveness of CAIR with respect to sources located in Minnesota until the Agency determined whether Minnesota should be included in CAIR. This letter was also submitted to the Court during briefing on the petitions for rehearing.

On December 23, 2008, the DC Circuit granted EPA's petition for rehearing only with regard to the vacatur and remanded CAIR without vacatur. This decision means that CAIR and the CAIR FIPs remain in effect while EPA develops a replacement rule consistent with the July 11, 2008, opinion.

II. What Is the Scope of This Final Rule?

In this final rule, EPA is only staying the effectiveness of CAIR and the CAIR FIPs with respect to Minnesota and sources in Minnesota. EPA intends to conduct further rulemaking in response to the Court's remand of CAIR and the CAIR FIPs. EPA intends that the stay with respect to Minnesota and Minnesota sources will remain in effect pending such further rulemaking.

EPA believes that the stay in this final rule is appropriate in light of several factors related to EPA's consideration, following the July 11, 2008 decision, of the issue concerning Minnesota's inclusion in CAIR. First, as discussed above, EPA did not seek rehearing of the Court's July 11, 2008 decision regarding the contribution analysis for Minnesota. Instead, before the Court ruled on the petitions for rehearing, EPA stated its intention to stay CAIR for Minnesota and sources in Minnesota pending a final agency determination concerning Minnesota's inclusion in CAIR. This information was presented to the Court during the rehearing process that resulted in the December 23, 2008 decision to remand CAIR without vacatur. This final rule carries out EPA's stated intent.

Second, the issue of whether Minnesota significantly contributes to nonattainment for fine particulate matter in any downwind state, contrary to one of the requirements for SIPs in section 110(a)(2)(D)(i)(I), is logically severable from the other issues (described above) that were remanded to EPA by the DC Circuit in *North Carolina.* This issue relates solely to whether EPA properly decided whether Minnesota should be covered by-CAIR for fine particulate matter. In contrast, the other remanded issues affect multiple states and relate either to another requirement in section 110(a)(2)(D)(i)(I) or to whether the specific emission reduction requirements in CAIR were proper or adequate as a remedy for each state's 110(a)(2)(D)(i)(I) problems. One of the other remanded issues concerns the Court's determination that EPA failed to give independent meaning to the requirement, in section 110(a)(2)(D)(i)(I), that states also eliminate emissions that interfere with maintenance in downwind states. *North Carolina,* 531 F.3d at 910. The remaining remanded issues concern various aspects of the remedies (e.g., the trading programs) EPA may approve in SIPs for states determined to have failed to meet the significant contribution requirement and raise complex questions about precisely what is required for each state to eliminate its significantly contributing emissions prohibited by section 110(a)(2)(D)(i)(I). The issue about Minnesota and Minnesota sources concerns the discrete question of whether EPA erred in its analysis of the contribution of Minnesota sources to downwind nonattainment areas and is logically severable from all the other remanded issues.

Third, as discussed in detail below, EPA finds that the stay with respect to Minnesota and Minnesota sources can be implemented immediately without disrupting the operation of the trading programs under CAIR and the CAIR FIPs and the allowance market. The stay is thus consistent with the Court's July 11, 2008 and the December 28, 2008 decisions leaving the CAIR and CAIR FIPs in place as promulgated while EPA develops a replacement rule. In addition, as noted above, the Court was aware of EPA's intent to stay CAIR with respect to Minnesota and Minnesota sources when it issued the December 28, 2008 decision.

Minnesota sources are currently subject to the CAIR annual SO_2 and annual NO_X trading programs, and the major issue in implementing the stay is how to treat, during the stay period, allowances that are usable in the trading programs and have already been allocated and recorded for Minnesota sources. As explained below, SO_2 and NO_X allowances must be treated differently.

In the CAIR SO_2 trading program as promulgated, sources (including those in Minnesota) are not issued new allowances but instead must use title IV allowances for compliance in the trading program.[1] Under title IV, allowances were allocated to sources, generally during 1993 in perpetuity, with each allowance authorizing in the Acid Rain Program one ton of emissions in the year for which the allowance was allocated or any year thereafter. In the CAIR SO_2 trading program, the same allowances are usable and authorize emissions in the same years, but those allowances allocated for years before

[1] While CAIR SO_2 opt-in units are allocated new CAIR SO_2 allowances, the Minnesota FIP does not allow for opt-in units.

2010 authorize one ton of emissions, those allocated for 2010 through 2014 authorize one-half ton of emissions, and those allocated for 2015 and thereafter authorize 0.35 ton of emissions. Implementation of the stay adopted in this final rule does not involve EPA making any changes in this final rule with regard to Minnesota sources' title IV allowances. Under the stay, these sources retain the title IV allowances that they currently hold (including any allocations for 2010 and thereafter that the sources have not transferred). Moreover, like any other title IV allowance that has not already been used or retired, title IV allowances allocated to Minnesota sources continue to be usable in either the Acid Rain Program or the CAIR SO_2 trading program and retain the above-described emission tonnage authorizations because those authorizations depend on the year for which the allowances were issued and the trading program in which they are used, not on whether the entity to which the allowances were allocated is subject to CAIR.

In contrast, the CAIR NO_X annual trading program provides for the issuance of new CAIR NO_X allowances and such allowances for 2009 have already been allocated for existing Minnesota sources and recorded in the sources' compliance accounts in the allowance tracking system for that program under the CAIR FIP for Minnesota. For the reasons discussed below, implementation of the stay in this final rule requires that an amount of 2009 CAIR NO_X allowances equivalent to the amount that has already been allocated and recorded for these sources be removed from the CAIR NO_X annual trading program and that no more CAIR NO_X allowances be allocated to Minnesota sources for the period that the stay is in place. However, as discussed below, EPA finds that this can be accomplished without disruption of the trading program and the allowance market.

While the stay in this final rule is in place, Minnesota sources will not need to use any of their allowance allocations to authorize their annual NO_X emissions. If those allowances that have already been recorded were not removed from the trading program and if allowances for future years continued to be allocated and recorded for Minnesota sources, the full amount of these allowances could be traded for use by non-Minnesota sources to authorize their own annual NO_X emissions. This would increase the total amount of allowances available each year for use by sources in the states that will continue to be subject to the NO_X annual trading program under CAIR or the CAIR FIPs. As a result, the total amount of CAIR NO_X allowances available each year for sources in these states would exceed the sum of the NO_X annual trading budgets under CAIR and the CAIR FIPs for these states. If this were allowed, the CAIR NO_X annual trading program would not achieve the NO_X emission reductions intended under CAIR and the CAIR FIPs and reflected in the state NO_X annual trading budgets.

EPA could have accomplished the removal from the trading program of the amount of the 2009 CAIR NO_X allowances allocated and recorded for Minnesota sources under the FIP for the CAIR NO_X annual trading program by simply requiring those sources to surrender those specific allowances. However, EPA understands that, although most of the CAIR NO_X allowances allocated and recorded for sources in Minnesota are still held in the sources' compliance accounts, at least one Minnesota source has traded some of its recorded allowance allocations.[2] Consequently, the final rule requires that each Minnesota source with a recorded allowance allocation in the CAIR NO_X annual trading program hold an amount of CAIR NO_X allowances issued for the same year as the recorded allocation (i.e., 2009) equal to the amount of the recorded allocation, regardless of whether the allowances held are the same ones that were allocated to the Minnesota source. Further, under the final rule, the Administrator will deduct, and thereby retire, these required allowance holdings, and no additional allowance allocations from the state NO_X annual trading budget for Minnesota will be recorded.

For the reasons outlined in the following paragraphs, EPA believes that this approach of requiring Minnesota sources to hold 2009 CAIR NO_X allowances equal in amount to such sources' allocations will achieve the allowance removal necessary to implement the stay without disrupting the operation of the CAIR NO_X annual trading program under CAIR and the CAIR FIPs, the allowance market, and the participation of non-Minnesota sources in the program. EPA also believes that it is reasonable that Minnesota sources be given the responsibility of holding in their compliance accounts the allowances that the Administrator needs to remove.

First, each Minnesota source with a recorded allocation for 2009 can meet this responsibility by continuing to hold its allocated 2009 CAIR NO_X allowances that it has not transferred and—to the extent necessary to replace any of its allocated 2009 CAIR NO_X allowances that have been included in the few trades of Minnesota-source-allocated allowances that have occurred—by obtaining other 2009 CAIR NO_X allowances. EPA does not believe it needs to require Minnesota sources to hold for deduction exactly the same CAIR NO_X allowances that were allocated to such sources. Because all CAIR NO_X allowances issued for a given year (here, 2009) under the CAIR NO_X annual trading program under CAIR and the CAIR FIPs are fungible, deduction of the same amount of CAIR NO_X allowances issued for 2009 has the desired effect of removing the extra allowances for 2009 whether the deducted allowances are the ones allocated to Minnesota sources or those allocated to other sources. In short, a deduction—but no reallocation—of CAIR NO_X allowances is necessary to implement the stay of the effectiveness of CAIR and the CAIR FIP rule with regard to Minnesota and Minnesota sources.

Further, this approach avoids disruption of the trading program, the allowance market, and the participation of non-Minnesota sources because no allowance transfers that have occurred will be reversed or invalidated. Any party that purchased allocated CAIR NO_X allowances from a Minnesota source will retain the ability to use, hold, or transfer those purchased allowances, and any planning, based on such purchased allowances, for compliance with the requirement to hold allowances covering emissions will not be affected.

EPA believes that it is reasonable to make Minnesota sources responsible for holding 2009 CAIR NO_X allowances for deduction in order to implement the stay. The burden of doing so will be minimal because, as discussed above, these sources have transferred, and so will have to replace, only a few of their allocated 2009 CAIR NO_X allowances and most of these sources will simply continue to hold their existing 2009 CAIR NO_X allocations. Further, these sources benefit from the stay in that they would remain subject to CAIR but for the stay. In summary, the stay can be implemented—through removal from the CAIR NO_X annual trading program of the amount of Minnesota sources' 2009 CAIR NO_X allowances—without

[2] According to EPA's allowance tracking system, a total amount of 29,875 CAIR NO_X allowances were allocated to Minnesota sources for 2009, and 68 of such allowances were sold (in a single transfer on March 7, 2008) by the recipient of the allocation to another party.

disrupting the trading program (including sources' compliance planning) or the allowance market or unreasonably burdening Minnesota and non-Minnesota sources.

EPA received several comments on the proposed rule for a stay of CAIR and the CAIR FIP for Minnesota and Minnesota sources. All of the comments supported the proposal.[3] One commenter also requested clarification of the amount of allowances for 2009 that EPA will deduct from each Minnesota source's compliance account. The amount of 2009 CAIR NO_X allowances deducted will be equal to the amount originally recorded as the allocation for 2009 for the source. As is stated explicitly in the text of this final rule, EPA will not deduct, pursuant to the final rule, any other allowances. Any source in Minnesota holding any allowances in addition to 2009 CAIR NO_X allowances in the amount of its 2009 CAIR NO_X allocation will retain such additional allowances and may hold them or transfer them at any time, as the source prefers.

Although the proposed rule set June 30, 2009, as the date on which Minnesota sources must hold these allowances for deduction, that date has passed. Instead, EPA is adopting in this final rule midnight of the date 30 days after the **Federal Register** publication date for this final rule (which EPA is also setting as the final rule's effective date) as the earliest, reasonable time and date on which to require the holding of such allowances. EPA believes that the requirement to hold such allowances as of midnight of December 3, 2009 will provide sufficient time for Minnesota sources to obtain the proper amount of CAIR NO_X allowances, particularly in light of the few trades of Minnesota-source-allocated allowances that have occurred. Moreover, EPA's preferred approach, as explained in the proposed rule, is removing these allowances from the trading program as quickly as possible. None of the commenters opposed that general approach.

[3] In addition, some commenters provided comments, along with supporting information, that Minnesota was improperly included in CAIR and that the stay should remain in effect until EPA prolmulgates a replacement rule for CAIR consistent with the Court's decisions. One commenter also attached to its comment on the proposal a copy of comments presented during the CAIR FIPs rulemaking, concerning the applicability and allowance allocation provisions in the CAIR FIP trading programs. In this rulemaking, EPA is only staying CAIR and the CAIR FIPs with respect to Minnesota and sources in Minnesota, without specifying at this time how long the stay will remain in effect, and is not taking any action regarding any other issues concerning CAIR and the CAIR FIPs. These comments thus are beyond the scope of this rule and do not require a response. EPA will respond to these comments in the context of the Agency's rulemaking in response to the remand of CAIR and the CAIR FIPs.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320(b). This action does not impose any information collection burden on any state, local, or tribal governments or the private sector and instead temporarily relieves Minnesota sources of any information collection burden under the CAIR trading programs.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any requirements on small entities and instead temporarily relieves Minnesota sources (including any small entities in Minnesota) of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action does not impose any new obligations or enforceable duties on any state, local, or tribal governments or the private sector and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not impose any new obligations or enforceable duties on any state, local, or tribal governments and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comments on the proposed action from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian Tribal governments. As discussed above, this action imposes no new requirements that would impose compliance burdens and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it imposes no new requirements and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations.

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

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

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not impose any new requirements and only temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 3, 2009.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which U.S. Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

Any final action related to CAIR is ''nationally applicable'' within the meaning of section 307(b)(1). Through CAIR and the CAIR FIPs, EPA interprets section 110 of the CAA, a provision that has nationwide applicability. In addition, the determination of whether a state (here, Minnesota) is covered by CAIR is based on a common core of factual findings and analyses concerning the transport of pollutants between different states. Finally, EPA has established uniform approvability criteria that would be applied to the SIP revisions submitted by all states subject to CAIR. For these reasons, the Administrator also is determining that any final action regarding CAIR is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of this final rule must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date the final rule is published in the **Federal Register.**

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 52

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 15, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, parts 51 and 52 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.123 is amended by adding a new paragraph (a)(3) to read as follows:

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

(a) * * *

(3) Notwithstanding the other provisions of this section, such provisions are not applicable as they relate to the State of Minnesota as of December 3, 2009.

* * * * *

■ 3. Section 51.124 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

(a) * * *

(2) Notwithstanding the other provisions of this section, such provisions are not applicable as they relate to the State of Minnesota as of December 3, 2009.

* * * * *

■ 4. Section 51.125 is amended by adding a new paragraph (a)(3) to read as follows:

§ 51.125 Emissions reporting requirements for SIP revisions relating to budgets for SO_2 and NO_X emissions.

(a) * * *

(3) Notwithstanding the other provisions of this section, such provisions are not applicable as they relate to the State of Minnesota as of December 3, 2009.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 6. Section 52.35 is amended by adding a new paragraph (e) to read as follows:

§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of nitrogen oxides?

* * * * *

(e) Notwithstanding paragraphs (a) and (b) of this section, such paragraphs are not applicable as they relate to sources in the State of Minnesota as of December 3, 2009, except as provided in § 52.1240(b).

■ 7. Section 52.36 is amended by adding a new paragraph (d) to read as follows:

§ 52.36 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of sulfur dioxide?

* * * * *

(d) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009.

■ 8. Section 52.1240 is amended by adding a new paragraph (b) to read as follows:

§ 52.1240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009, except that:

(1) The owner and operator of each source referenced in such paragraph in whose compliance account any allocation of CAIR NO_X allowances was recorded under the Federal CAIR NO_X Annual Trading Program in part 97 of this chapter shall hold in that compliance account, as of midnight of December 3, 2009 and with regard to each such recorded allocation, CAIR NO_X allowances that are usable in such trading program, issued for the same year as the recorded allocation, and in the same amount as the recorded allocation. The owner and operator shall hold such allowances for the purpose of deduction by the Administrator under paragraph (b)(2) of this section.

(2) After December 3, 2009, the Administrator will deduct from the compliance account of each source in the State of Minnesota any CAIR NO_X allowances required to be held in that compliance account under paragraph (b)(1) of this section. The Administrator will not deduct, for purposes of implementing the stay, any other CAIR NO_X allowances held in that compliance account and, starting no later than December 3, 2009, will not record any allocation of CAIR NO_X allowances included in the State trading budget for Minnesota for any year.

■ 9. Section 52.1241 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 52.1241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

* * * * *

(b) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009.

[FR Doc. E9–25596 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2264; MB Docket No. 09–50; RM–11515]

FM Table of Allotments: Cut Bank, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by College Creek Media, LLC, permitee of Station KEAU(FM), Channel 274C1, Fairfield, Montana, requesting the substitution of Channel 265C1 for vacant Channel 274C1 at Cut Bank to eliminate the short-spacing between Station KEAU's authorized transmitter site and the vacant Channel 274C1 at Cut Bank. Channel 265C1 can be allotted to Cut Bank consistent with the minimum distance separation requirements of the Commission's Rules, with the imposition of a site restriction located 39.4 kilometers (24.5 miles) east of Cut Bank. The reference coordinates are 48–39–28 NL and 111–47–29 WL. The allotment of Channel 265C1 at Cut Bank is located 320 kilometers (199 miles) from the Canadian border. Therefore, Canadian concurrence has been requested and approved by the Canadian government.

DATES: Effective December 7, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 09–50, adopted October 21, 2009, and released

October 23, 2009. The Notice of Proposed Rule Making proposed the substitution of Channel 265C1 for vacant Channel 274C1 at Cut Bank. See 74 FR 20445, published May 4, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, *http://www.bcpiweb.com.*

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to §§1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice) , 202–418–0432 (tty).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 274C1 and adding Channel 265C1 at Cut Bank.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–26311 Filed 11–2–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2265; MB Docket No. 09–7; RM–11424]

FM Table of Allotments: McNary, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making issued at the request of William S. Konopnicki, proposing the allotment of Channel 249C1 at McNary, Arizona, as its first local service. Channel 249C1 at McNary can be allotted, consistent with the minimum distance separation requirements of the Commission's Rules (the ''Rules) with the imposition of a site restriction located 0.3 kilometers (0.2 miles) northeast of the community, using reference coordinates 34–04–30 NL and 109–51–15 WL. The McNary allotment is contingent upon the final outcome of MB Docket No. 05–263 since the proposed allotment is short–spaced to counter–proposed Channel 251C at St. Johns, Arizona in that proceeding.

DATES: Effective December 7, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 09–7, adopted October 21, 2009, and released October 23, 2009. The Notice of Proposed Rule Making proposed the allotment of Channel 249C1 at McNary, Arizona. See 74 FR 25696, published May 29, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, *http://www.bcpiweb.com.*

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* For submitting comments, filers should follow the instructions provided on the website.

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For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

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- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

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List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73–RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding McNary, Channel 249C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–26312 Filed 11–2–09; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0811201490–91372–03]

RIN 0648–AX42

Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 85

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. These regulations amend the Central Gulf of Alaska Rockfish Program to remove a restriction that prohibits certain catcher/processors from participating in directed groundfish fisheries in the Bering Sea and Aleutian Islands Management Area in July. This action is necessary to improve flexibility and reduce operating costs for catcher/processors that participate in the Central Gulf of Alaska Rockfish Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable laws.

DATES: Effective December 3, 2009.

ADDRESSES: Copies of Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), the categorical exclusion memorandum prepared for this action, and the Environmental Assessment, RIR and FRFA prepared for the Central Gulf of Alaska Rockfish Program are available from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Glenn Merrill or Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The North Pacific Fishery Management Council (Council)

prepared both FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. Amendment 68 to the GOA FMP implemented the Central GOA Rockfish Program (Rockfish Program). Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Rockfish Program is a limited access privilege program (LAPP) for the Central GOA rockfish fisheries because the participants can receive exclusive harvesting privileges for a portion of the total allowable catch (TAC) assigned to the Central GOA rockfish fisheries and species caught incidentally in the Central GOA rockfish fisheries if they a form fishery cooperative with other eligible participants.

A person is eligible to participate in the Rockfish Program and receive exclusive harvesting privileges if that person holds a License Limitation Program (LLP) license that has been associated with one or more vessels that made legal landings of Central GOA rockfish species using trawl catcher vessels and trawl catcher/processors during the rockfish fishing seasons from 1996 through 2002, and the landings were attributed to that LLP license. When the Rockfish Program was implemented, eligible LLP license holders who applied to NMFS received quota share (QS), which is the multi-year privilege to receive exclusive harvesting privileges under the Rockfish Program. NMFS calculated how much QS would be allocated to an LLP license based on the catch history of the associated vessels and modified LLP licenses to designate the calculated amount of QS on the license. Fishing began under the Rockfish Program in May 2007.

Eligible harvesters must elect by March 1 of each calendar year whether to participate in the Rockfish Program. To participate, a rockfish harvester who received a QS allocation assigned to a specific LLP license must assign all QS associated with that LLP license to (1) a cooperative fishery, in which the harvester receives exclusive harvest privileges, or (2) a limited access fishery, in which eligible harvesters compete for a share of Central GOA rockfish TACs. Eligible harvesters in the catcher/processor sector may elect to not participate, or to ''opt out,'' of the Rockfish Program and most of its requirements. Eligible harvesters can change their fishery participation selection prior to each fishing year, which begins in May and ends in November. Once an LLP license and its associated QS are assigned for the fishing year, the rockfish harvester cannot reassign the LLP license or QS to a different Rockfish Program fishery during that fishing year.

The total amount of QS assigned to all members of a cooperative yields an amount of cooperative quota (CQ), which is a permit to a rockfish cooperative that provides an exclusive harvesting privilege for a specific amount of Central GOA rockfish, in specific fisheries, during a specific fishing year (50 CFR 679.2; 50 CFR 679.4(n)(1)). A cooperative also receives a specific amount of CQ that may be used for the incidental catch of a specific amount of other rockfish, groundfish species, or halibut. Incidentally caught halibut, called prohibited species catch (PSC), cannot be retained, processed, or sold, but the amount caught is subtracted from the CQ for halibut. NMFS tracks use of halibut PSC by the participants in GOA rockfish fisheries and closes the fisheries when halibut PSC limits are reached, even if the rockfish TACs are not harvested. Quota share holders participating in the limited access fishery are not assigned an exclusive harvest or PSC use privilege, but may compete to harvest the allocation of Central GOA rockfish species and PSC remaining after NMFS has assigned CQ to all cooperatives.

Previous Sideboard Limits

NMFS commonly establishes catch limits and other fishery participation restrictions, called sideboard limits, when implementing LAPPs. Sideboard limits are intended to prevent participants who benefit from receiving exclusive harvesting privileges in the LAPP from shifting effort into fisheries that are not managed by a LAPP and disadvantaging participants in those fisheries. The sideboard limits in the Rockfish Program are in effect only during the month of July. These sideboard limits restrict fishing by Rockfish Program participants during the historical timing of the Central GOA rockfish fisheries, but allow harvesters to participate in other fisheries in which they have historically fished.

The Rockfish Program has two types of sideboard limits: (1) caps on the amount of harvest by Rockfish Program participants in specific areas and fisheries during July; and (2) directed fishing prohibitions in specific areas and fisheries during July. Sideboard limits apply to all LLP licenses and vessels that could have been used to generate QS, even if the holder of an LLP license or a vessel owner did not submit an application to participate in the Rockfish Program.

Harvest sideboard limits cap the amount of primary species catch in the Western GOA and the West Yakutat District and the amount of halibut PSC that can be used in the Central GOA, Western GOA, and West Yakutat District groundfish fisheries by the Rockfish Program catcher vessel and catcher/processor sectors during the month of July.

The Rockfish Program directed fishing prohibitions restrict participation in specific fisheries during July by vessels subject to the sideboard limit. This type of restriction is commonly called a ''stand down.'' Regulations at 50 CFR 679.2 define ''directed fishing'' as any activity that results in a vessel retaining an amount of a species or species group onboard that is greater than the maximum retainable amount. Maximum retainable amount is the maximum amount of a species or species group expected to be caught if that species or species group was harvested incidentally in another target fishery. Maximum retainable amounts of incidentally caught species are calculated for all groundfish species and species complexes in the GOA and BSAI and specified in the regulations at 50 CFR 679.20(e).

Prior to Amendment 85 to the GOA FMP, vessels and LLP licenses assigned to a rockfish cooperative in the catcher/processor sector were required to stand down from BSAI groundfish fisheries, other than pollock and fixed-gear sablefish, from July 1 to July 14. In addition, vessels in the catcher/processor sector using an LLP license with greater than 5 percent of the Pacific ocean perch QS allocated to the catcher/processor sector and assigned to the Rockfish Program limited access fishery were required to stand down in BSAI groundfish fisheries, except pollock or fixed-gear sablefish, from July 1 until 90 percent of the Pacific ocean perch CQ assigned to the catcher/processor limited access fishery was harvested. Fixed-gear sablefish and pollock fisheries in the BSAI are managed under LAPPs. NMFS typically excludes fisheries managed under a LAPP from the sideboard limits imposed in other LAPPs. A LAPP allocates exclusive harvesting privileges to eligible participants. Sideboard limits are intended to protect participants only in non-LAPP fisheries because they may be disadvantaged by increased fishing effort from participants who benefit from a LAPP. Rockfish Program catcher/processors are also subject to July stand downs in the GOA.

Fifteen harvesters in the catcher/processor sector are eligible to participate in the Rockfish Program. In the first two years of the Rockfish Program, eight catcher/processor vessels were subject to the BSAI stand downs in July; five harvesters in the rockfish cooperative fishery and three harvesters in the limited access fishery. The BSAI stand downs adversely impacted fishing operations and increased vessel costs for the cooperative fishery participants. Although the BSAI stand downs likely did not adversely impact catcher/processors in the limited access fishery, the stand downs likely were a disincentive for eligible catcher/processors to participate in the Rockfish Program.

Prior to the Rockfish Program implementation, the Central GOA rockfish fisheries opened around July 1. At the conclusion of the Central GOA rockfish fisheries, participants in the catcher/processor sector of the Central GOA rockfish fisheries typically moved to the Western GOA and West Yakutat District to harvest rockfish and other flatfish species. After completing the Western GOA and West Yakutat District groundfish fisheries, some catcher/processor vessels moved to the BSAI, typically to harvest Pacific ocean perch in the Aleutian Islands. When the Rockfish Program was implemented, the Central GOA rockfish fisheries opening date shifted from July 1 to May 1 for vessels that are members of a cooperative. In the first year of the Rockfish Program, most cooperative participants in the catcher/processor sector had completed fishing in the Central GOA rockfish and other GOA fisheries in June, but all harvesters in the cooperative fishery were prohibited from participating in BSAI groundfish fisheries from July 1 to July 14 by the stand down. Some vessels were idle for approximately two weeks. Any stand down reduces efficiency because crew and fuel costs are still incurred while the vessel is idle, which adversely impacts the operators of these vessels.

The Rockfish Program did not shift the fishery opening dates for catcher/processors participating in the limited access fishery, and these vessels cannot participate in the Central GOA rockfish fisheries before July 1, the historical fishery opening date. In 2007, the threshold to relieve the stand down (i.e., harvest of 90 percent of the Central GOA Pacific ocean perch allocated to the catcher/processor sector) was reached on July 5. In the years prior to the Rockfish Program implementation, vessels that participated in the GOA rockfish and flatfish fisheries did not complete the GOA fisheries and move on to the BSAI groundfish fisheries before July 5. Therefore, the five-day stand down period in 2007 likely did not negatively impact vessels in the Rockfish Program catcher/processor limited access fishery because it did not disrupt historical fishing patterns for these harvesters.

In January 2008, NMFS implemented Amendments 80 and 85 to the BSAI FMP. Amendment 80 allocated exclusive harvesting privileges for several BSAI directed trawl groundfish fisheries by allocating CQ for five groundfish species and halibut and crab PSC to eligible persons that join an Amendment 80 cooperative (50 CFR 679.2; 50 CFR 679.4(o)(2). Amendment 85 to the BSAI FMP allocated Pacific cod, which is a directed fishery, among gear sectors in the BSAI. Prior to Amendment 85 to the BSAI FMP, the allocation of Pacific cod to the trawl catcher/processor sector was available to all trawl catcher/processors in the BSAI. Amendment 85 to the BSAI FMP recognized the differences between catcher/processors that primarily participate in the directed BSAI pollock fishery and catcher/processors that participate in the Amendment 80 sector by creating a separate allocation for each. Implementation of Amendments 80 and 85 to the BSAI FMP significantly reduced the likelihood that catcher/processors participating in the Central GOA Rockfish Program could increase effort in BSAI groundfish fisheries to the disadvantage of other groundfish fishery participants during the period in early July when the stand downs are in effect. The RIR/IRFA prepared for this action (see **ADDRESSES**) analyzed the effects of the stand downs on fishery participants and the implementation of Amendments 80 and 85 to the BSAI FMP. Based on the RIR/IRFA and testimony from Rockfish Program participants, the Council determined in October 2008 that the BSAI stand down requirements for catcher/processors participating in the Rockfish Program are no longer necessary to protect participants in BSAI groundfish fisheries. The Council also determined that several participants in the Rockfish Program catcher/processor sector likely would benefit if the BSAI stand downs were eliminated.

Effects of This Action

The following briefly describes the effects of removing the BSAI groundfish fishery stand downs for all harvesters in the Rockfish Program catcher/processor sector. Additional discussion of the rationale for and effects of this action is provided in the preamble to the proposed rule published on April 6, 2009 (74 FR 15420), and is not repeated here.

This action will enable Rockfish Program catcher/processors to participate in BSAI groundfish fisheries in July. This action will most benefit harvesters in the catcher/processor sector that participate in BSAI groundfish fisheries and elect to join a Central GOA rockfish cooperative. These operators will be able to coordinate fishing activities in the GOA and BSAI and avoid the costs of idling a vessel during the BSAI stand down period in July.

This action does not affect other GOA groundfish fisheries because removing the BSAI stand downs for the catcher/processor sector will not change the allocations to or timing of the Central GOA rockfish fisheries. Participants in the Rockfish Program catcher/processor sector are subject to sideboard limits in other GOA fisheries, and this action does not change the existing GOA sideboard limits.

Table 1 summarizes the Rockfish Program directed fishing prohibitions for the catcher/processor sector with this final rule.

TABLE 1. ROCKFISH PROGRAM DIRECTED FISHING PROHIBITIONS FOR THE CATCHER/PROCESSOR SECTOR

Sideboard limits for July	Catcher/Processor Cooperatives	Catcher/Processor Limited Access Fishery	Catcher/Processor Opt Out
Prohibited fishing:			
BSAI groundfish	None	None	None

TABLE 1. ROCKFISH PROGRAM DIRECTED FISHING PROHIBITIONS FOR THE CATCHER/PROCESSOR SECTOR—Continued

Sideboard limits for July	Catcher/Processor Cooperatives	Catcher/Processor Limited Access Fishery	Catcher/Processor Opt Out
GOA groundfish	Directed fishing prohibited for all GOA groundfish except fixed-gear sablefish from July 1–July 14 if the rockfish cooperative has harvested any CQ prior to July 1. If the rockfish cooperative has not harvested any CQ prior to July 1, directed fishing is prohibited for all GOA groundfish except fixed-gear sablefish from July 1 until 90% of the rockfish cooperatives' primary species CQ has been harvested.	Directed fishing prohibited from July 1 until 90% of the Pacific ocean perch assigned to the limited access fishery in the catcher/processor sector is harvested, for all GOA groundfish except fixed-gear sablefish.	July 1–July 14, unless prior participation in two years from 1996 to 2002.
	Prohibition does not apply if the cooperative maintains a monitoring program, as required under the regulations, during all fishing for CQ or any directed sideboard fishery in the GOA.	Applies only to catcher/processors with >5% of the total Central GOA Pacific ocean perch QS assigned to the catcher/processor sector.	

This final rule may encourage eligible harvesters to join a Rockfish Program cooperative because the BSAI stand downs likely were a significant disincentive for eligible catcher/processors to join a rockfish cooperative. NMFS anticipates that this action will benefit catcher/processors in the limited access fishery less than it will benefit catcher/processors in the cooperative fishery. Nonetheless, it is possible that the risk of a BSAI stand down of unknown length may have deterred some catcher/processors from participating in the limited access fishery in the first two years of the Rockfish Program, and more eligible harvesters may choose to participate in that fishery with this action.

This action should not enable Rockfish Program participants to adversely affect non-Rockfish Program participants in BSAI groundfish fisheries by increasing effort in those fisheries in early July. Amendment 80 significantly increased the number of BSAI directed groundfish fisheries managed under LAPPs in which only designated participants can receive exclusive harvesting privileges and participate in the fishery. Amendments 80 and 85 to the BSAI FMP enable participants in the Amendment 80 cooperative fishery to manage most of their key target and incidental catch species within a cooperative. Cooperatives provide a significant amount of flexibility, in addition to cost savings from vessel consolidation and the ability to trade harvesting privileges within or between cooperatives. The halibut PSC allocation provided to the Amendment 80 cooperative fishery participants is particularly important because halibut PSC acts as a constraint on fully harvesting the TACs for all directed trawl fisheries in the BSAI. Two-thirds of the eligible harvesters in the Rockfish Program catcher/processor sector are eligible to participate in the Amendment 80 program, and nearly 70 percent of all eligible harvesters participated in an Amendment 80 cooperative in 2008. Hence, this action should not affect a significant portion of Amendment 80 participants because they will receive exclusive harvesting privileges by joining a cooperative. In addition, seven of the 15 harvesters eligible to participate in the Rockfish Program also participated in an Amendment 80 cooperative and are expected to benefit from this action by gaining the ability to coordinate harvesting operations in the GOA and BSAI.

Trawl fisheries for non-Amendment 80 species (with the exception of Pacific cod, which is fully utilized), have had limited historical participation because market values are generally low for these species. Furthermore, trawl harvesters have few directed fishing opportunities during the early July time period owing to halibut PSC constraints and relatively small TAC specifications for these fisheries. Therefore, it is unlikely that Rockfish Program catcher/processors will increase participation in these fisheries in July to the detriment of other participants under this action.

Notice of Availability and Proposed Rule

NMFS published a notice of availability for Amendment 85 to the GOA FMP on March 24, 2009 (74 FR 12300), with a public comment period that closed on May 26, 2009. NMFS published the proposed rule to implement Amendment 85 on April 6, 2009 (74 FR 15420). NMFS subsequently discovered an error in the proposed regulatory text, which incorrectly changed the GOA directed fishing prohibitions that would apply to catcher/processors in the Rockfish Program. This proposed change was inconsistent with Amendment 85, which only removes the BSAI directed fishing prohibitions for catcher/processor vessels that participate in the Rockfish Program. NMFS published a notice to correct the proposed regulatory text on May 13, 2009 (74 FR 22507). The notice corrected proposed regulatory text at 50 CFR 679.82(g)(3) to accurately reflect the intent of Amendment 85 to the GOA FMP and extended the public comment period on the proposed rule by 30 days from May 21, 2009, to June 22, 2009. NMFS received three public comments on Amendment 85 and the proposed rule from two individuals. One comment supported Amendment 85 and the proposed rule and one comment opposed Amendment 85. The third comment was not directly related to the action. These comments did not raise new issues or concerns that have not already been addressed in the RIR/IRFA prepared to support this action or the preamble to the proposed rule. After consideration of these comments, NMFS approved Amendment 85 to the GOA FMP on June 18, 2009.

Response to Comments

Comment 1: NMFS should not remove fishery management restrictions from the Rockfish Program just because it reduces operational costs for catcher/processors.

Response: The Council determined, and NMFS concurs, that the BSAI stand

downs for catcher/processors that participate in the Rockfish Program are overly restrictive and impose unnecessary costs on the operations to which they apply. Pursuant to the procedural and analytical requirements of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared an RIR for this action (see **ADDRESSES**) to analyze the economic effects of alternatives to relieve catcher/processors from the BSAI stand downs, in contrast to taking no action (status quo). The RIR is intended to assist the Council and NMFS in selecting the regulatory approach that maximizes net benefits to the Nation (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The RIR analyzed the status quo and three alternatives to remove the BSAI stand downs for certain catcher/processors that participate in the Rockfish Program. The RIR indicated that a minor overall net benefit to the Nation may arise from the preferred alternative, which is implemented by this final rule, because it has the potential to increase efficiency and decrease costs for vessels subject to the BSAI stand downs without negatively impacting other BSAI groundfish fishery participants. The preferred alternative also may increase the number of catcher/processor vessels that participate in the Rockfish Program cooperative fishery, which could increase resource conservation. The Council reviewed the Rockfish Program one year after implementation to assess the impacts on participants and resource conservation. The most notable effect of Rockfish Program implementation was a reduction in discards and halibut mortality among cooperative fishery participants. The Council's Rockfish Program review is available at *http://www.fakr.noaa.gov/npfmc/current_issues/groundfish/RPPreview508.pdf*. Although NMFS could not prepare a quantitative cost-benefit analysis with existing information, based on the best available information NMFS believes that the benefits of this action exceed the costs when compared to the status quo.

Comment 2: The commenter raises general concerns about NMFS's management of fisheries, asserting that fishery policies have not benefited American citizens. The commenter also asserts that NMFS is biased and should not be allowed to manage fisheries.

Response: This comment is not specifically related to the proposed rule. The comment recommends broad changes to fisheries management and provides opinions of the Federal Government's general management of marine resources that are outside of the scope of this action. The comment did not raise new relevant issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action or the preamble to the proposed rule.

Comment 3: The BSAI stand downs for catcher/processors in the Rockfish Program are too restrictive because they potentially create higher maintenance and crew costs for vessel operators due to idle time in waiting out the stand down period. Moreover, the BSAI stand downs are no longer needed to protect other BSAI groundfish fishery participants and should be removed from the Rockfish Program.

Response: NMFS concurs.

As described in detail above and in the RIR/FRFA prepared for this action (see **ADDRESSES**), this final rule modifies the Rockfish Program regulations to remove all instances in which Central GOA rockfish catcher/processors are required to stand down from BSAI directed fisheries in July. These references occur in regulatory text at 50 CFR 679.82.

Changes From the Proposed Rule

NMFS did not make any changes from the corrected proposed rule published on May 13, 2009 (74 FR 22507), to the final rule.

Classification

The Assistant Administrator for Fisheries, NMFS, has determined that Amendment 85 to the GOA FMP is necessary for the conservation and management of GOA rockfish fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts that this action may be expected to have. Additionally, a FRFA was prepared that describes the impact this action has on small entities. The RIR/FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). The RIR/FRFA prepared for this final rule incorporates by reference an extensive RIR/FRFA prepared for Amendment 68 to the GOA FMP that detailed the impacts of the Rockfish Program on small entities.

The FRFA for this action describes the action, why this action is being proposed, the objectives and legal basis for the final rule, the type and number of small entities to which the final rule applies, and projected reporting, recordkeeping, or other compliance requirements of the final rule. It also identifies any overlapping, duplicative, or conflicting federal rules; and describes any significant alternatives to the final rule that accomplish the stated objectives of the Magnuson-Stevens Fishery Conservation and Management Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the final rule on small entities.

The description of this action, its purpose, and its legal basis are described in the preamble and are not repeated here. The proposed rule for this action was published on April 6, 2009 (74 FR 15420), and a notice to correct an error in the proposed regulatory text was published on May 13, 2009 (74 FR 22507). An IRFA was prepared and summarized in the classification section of the preamble to the proposed rule. The correction notice extended the public comment period on the proposed rule from May 21, 2009, to June 22, 2009. NMFS received three public submissions on Amendment 85 to the GOA FMP and the proposed rule. These comments did not address the IRFA.

For purposes of a FRFA, the U.S. Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply the SBA's fish harvesting criterion for those businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until

new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors.

Under principles established by the SBA at 13 CFR 121.03, business concerns are affiliated when they have identical or substantially identical business or economic interests, or are economically dependent through contractual or other relationships. The interests of affiliated individuals or firms are aggregated when measuring whether the entity is a small business under the Regulatory Flexibility Act.

The FRFA contains a description and estimate of the number of small entities to which the final rule will apply. The FRFA estimates that none of the directly regulated entities are small businesses. However, current empirical data on cost structure, affiliation, operational procedures and strategies in the fishing sectors subject to this regulatory action are incomplete.

This final rule directly regulates all catcher/processor vessels and LLP licenses that qualify for the Rockfish Program. The number of directly regulated entities depends on the annual choice made by catcher/processors whether to participate in the Rockfish Program cooperative fishery or limited access fishery. There are a total of 15 catcher/processor vessels and LLP licenses that qualify for the Rockfish Program, representing the maximum number of entities that could be directly regulated under this action in any given year. If all 15 catcher/processors choose to join a rockfish cooperative, this action to remove the BSAI stand down will apply to all Rockfish Program catcher/processors. Available catch and earnings data suggest that cooperatives created under the Rockfish Program were large entities because they likely have aggregate gross receipts, from all sources, including affiliated worldwide, in excess of the $4 million threshold specified by the SBA.

If all 15 catcher/processors choose to participate in the limited access sector, eight of the 15 will be subject to the BSAI stand down and represent the maximum number of entities that could be directly regulated under this action. Of these eight catcher/processors, six are also part of the Amendment 80 sector in the BSAI. Four of these vessels were part of an Amendment 80 cooperative in 2008, and were considered affiliated by their membership in the cooperative. The remaining four Amendment 80 vessels are also affiliated because they are owned by two companies that each own two vessels. Hence all eight catcher/processors were considered large entities for purposes of the RFA.

All of the directly regulated entities are expected to benefit from this action relative to the status quo alternative because it relieves restrictions that limit their ability to participate in directed BSAI groundfish fisheries in early July.

The Council analyzed and considered four alternatives to relieve restrictions for the specific participants and fisheries subject to the July BSAI stand down periods. These alternatives included the status quo (Alternative 1), exempting Amendment 80 cooperative participants from the BSAI stand downs (Alternative 2), exempting all Amendment 80 sector participants from the BSAI stand downs (Alternative 3), and removing the BSAI stand downs for all catcher/processors in the Rockfish Program (Alternative 4). The RIR prepared for this final rule determined both Amendment 80 and non-Amendment 80 catcher/processors participating in the Rockfish Program likely will be unable to increase effort in BSAI groundfish fisheries to the disadvantage of other participants in early July when the stand downs are in effect. Hence, there is little benefit to retaining the July BSAI stand downs for any subset of the Rockfish Program catcher/processor sector as considered in Alternatives 2 and 3. Alternative 4 (implemented by this rule) has the greatest potential to reduce operating costs and increase flexibility for participants in the catcher/processor sector of the Rockfish Program.

This final rule will not change existing reporting, recordkeeping, or other compliance requirements. This final rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

NMFS has posted a small entity compliance guide on its website at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: October 28, 2009

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108—447.

■ 2. In § 679.82, paragraph (f)(3) is removed, paragraph (f)(4) is redesignated as paragraph (f)(3), and newly redesignated paragraphs (f)(3)(i)(A), (f)(3)(ii)(A), and paragraph (g)(3) are revised to read as follows:

§ 679.82 Rockfish Program use caps and sideboard limits.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(3)(iii) of this section; and

* * * * *

(ii) * * *

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(3)(iii) of this section; and

* * * * *

(g) * * *

(3) *Prohibition from directed fishing in GOA groundfish fisheries.* Except for the rockfish limited access fishery and sablefish harvested under the IFQ Program, a vessel may not participate in any GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species, from July 1 until 90 percent of the Central GOA Pacific ocean perch that is allocated to the rockfish limited access fishery for the catcher/processor sector has been harvested, if:

(i) The vessel is named on an LLP license used in the rockfish limited access fishery; and

(ii) The vessel has been assigned rockfish QS greater than an amount equal to 5 percent of the Pacific ocean perch rockfish QS allocated to the catcher/processor sector.

* * * * *

[FR Doc. E9–26456 Filed 11–2–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090218204–91211–04]

RIN 0648–AX71

Fisheries of the United States Exclusive Economic Zone Off Alaska; Fisheries of the Arctic Management Area; Bering Sea Subarea

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that implements the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP) and Amendment 29 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic FMP and Amendment 29 to the Crab FMP establish sustainable management of commercial fishing in the Arctic Management Area and move the northern boundary of the Crab FMP out of the Arctic Management Area south to Bering Strait. This action is necessary to establish a management framework for commercial fishing and to provide consistent management of fish resources in the Arctic Management Area before the potential onset of unregulated commercial fishing in the area. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Effective December 3, 2009.

ADDRESSES: Electronic copies of the Arctic FMP, Amendment 29 to the Crab FMP, maps of the action area and essential fish habitat, and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Bering Sea and Aleutian Islands king and Tanner crab fisheries are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic Management Area fisheries are managed under the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP). The North Pacific Fishery Management Council (Council) prepared the Crab FMP and the Arctic FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

On May 19, 2009, the Council submitted the Arctic FMP and Amendment 29 to the Crab FMP for review by the Secretary of Commerce (Secretary). A notice of availability (NOA) of the Arctic FMP and Amendment 29 was published in the **Federal Register** on May 26, 2009 (74 FR 24757). The proposed rule for the Arctic FMP and Amendment 29 was published in the **Federal Register** on June 10, 2009 (74 FR 27498). Comments on the Arctic FMP, Amendment 29, and the proposed rule were invited through July 27, 2009. Comments received on the Arctic FMP, Amendment 29, and the proposed rule are summarized and responded to below.

The Arctic FMP and Amendment 29 to the Crab FMP were approved by the Secretary on August 17, 2009.

Background

The Arctic FMP and Amendment 29 to the Crab FMP provide for sustainable management of commercial fishing in the Arctic Management Area and eliminate management authority within the Arctic Management Area from the Crab FMP. The Arctic FMP establishes a management framework to sustainably manage future commercial fishing in the Arctic Management Area and initially prohibits commercial fishing until new information regarding Arctic fish resources allows for authorization of a sustainable commercial fishery in the area. Amendment 29 to the Crab FMP ensures consistent management of all crab species in the Arctic Management Area under the Arctic FMP.

In February 2009, the Council recommended the Arctic FMP to implement a management framework to protect the fish resources of the Arctic Management Area against the potential onset of unregulated commercial fishing. The Arctic FMP initially prohibits commercial fishing until sufficient information is available to enable a sustainable commercial fishery to proceed, consistent with the Magnuson-Stevens Act. Global climate change is reducing the extent of sea ice in the Arctic Ocean, providing greater access to Arctic marine resources and increasing human activity in this sensitive marine environment of the U.S. Exclusive Economic Zone (EEZ). This action prevents potential adverse effects on the Arctic marine environment from unregulated commercial fishing. The Arctic FMP is a precautionary, ecosystem-based approach to fisheries management in the Arctic Management Area.

The Arctic FMP has all required provisions and appropriate discretionary provisions for an FMP contained in sections 303(a), 303(b), and 313 of the Magnuson-Stevens Act. The conservation and management provisions in the Arctic FMP were developed in consideration of the new National Standard 1 guidelines (74 FR 3178, January 16, 2009). The proposed rule (74 FR 27498, June 10, 2009) contains a summary of the contents of the Arctic FMP and Amendment 29 to the Crab FMP, which provide the authority for conservation and management of fish resources and for the provisions in this final rule.

The Arctic FMP and final rule apply to commercial harvests of most fish resources in the waters of the Arctic Management Area (Figure 24 in this final rule). The geographic extent of the Arctic Management Area is all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 United States/Russia maritime boundary line and eastward to the United States/Canada maritime boundary as claimed by the United States.

This final rule does not affect non-commercial fishing in the Arctic Management Area or commercial harvest of certain species that are managed pursuant to other legal authorities. It has no effect on the commercial harvest of Pacific salmon and Pacific halibut. The commercial harvest of Pacific salmon in the Arctic Management Area is managed under the FMP for Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP), which prohibits commercial salmon fishing in the Arctic Management Area. Pacific halibut commercial fishing is managed by the International Pacific Halibut Commission (IPHC), which does not allow harvest of Pacific halibut in the Arctic Management Area. This action makes no changes to subsistence harvest of marine resources in the Arctic Management Area.

Regulatory Amendments

The following describes the regulatory changes and additions to 50 CFR part 679 to implement the Arctic FMP and Amendment 29.

1. Section 679.1 is revised to add the title of the Arctic FMP and to describe the scope of the FMP as governing commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States. This addition is necessary to expand the scope of the 50 CFR part 679 regulations to include implementation of the Arctic FMP.

2. Section 679.2 is amended to add and revise definitions for the Arctic FMP and for Amendment 29 to the Crab FMP. A definition for ''Arctic fish'' is added to distinguish in regulations the species under the authority of the Arctic FMP. The Arctic fish definition includes all fish as defined by the Magnuson-Stevens Act, excluding Pacific halibut and Pacific salmon. The Magnuson-Stevens Act defines ''fish'' as finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Commercial fishing for Pacific halibut and Pacific salmon in the EEZ off Alaska is managed by the IPHC and under the Salmon FMP, respectively, and is not managed under the Arctic FMP. Creating this definition allows for the initial prohibition of commercial fishing for Arctic fish, as prescribed by the Arctic FMP.

A definition for the ''Arctic Management Area'' as described by the Arctic FMP is added. The area is described in regulatory text in § 679.2 and is shown in Figure 24 in part 679. This definition is necessary to define the area within which this rule governs commercial fishing.

The definition for the ''Bering Sea and Aleutian Islands Area'' for the purposes of king and Tanner crab management is revised. This revision implements Amendment 29 to the Crab FMP by moving the northern boundary of the Crab FMP fishery management area from Point Hope southward to Bering Strait. This revision is necessary to eliminate management authority in the Arctic Management Area from the Crab FMP so that all crab stocks that occur within the Arctic Management Area are managed under the Arctic FMP.

The definition of ''commercial fishing'' is revised to include the catch of Arctic fish which is or is intended to be sold or bartered, excluding subsistence fishing. This revision is necessary to manage, and initially prohibit, commercial fishing for Arctic fish and to ensure subsistence fishing is not affected by such management of commercial fishing.

The definition of ''management area'' is revised to add the Arctic Management Area. This revision is necessary to list the Arctic Management Area with the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska. This revision allows for fishery management in the Arctic Management Area to be within the scope of the regulations at § 679.1.

The definition of ''optimum yield'' is revised by adding Arctic fish and referencing § 679.20(a)(1) where the optimum yield for target species identified in the Arctic FMP is specified. This revision is necessary to establish the optimum yield for the target species and to support the prohibition on commercial fishing of target species.

The definition of ''subsistence fishing'' is added to describe subsistence harvests in the Arctic Management Area of Arctic fish and Pacific salmon. Subsistence in terms of Pacific halibut is defined under regulations at 50 CFR 300.61 and is not changed by this definition. Subsistence fishing in the Arctic is the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence. Adding this definition to 50 CFR part 679 allows subsistence harvest practices to be differentiated from commercial harvest practices, which are prohibited. This addition is necessary to ensure the continued subsistence harvest of Arctic fish and Pacific salmon in the Arctic Management Area while differentiating such activity from commercial fishing.

3. The introductory paragraph to § 679.6 addressing exempted fishing permits (EFPs) is revised to add Arctic fish. EFPs currently are available for only groundfish exempted fishing. Because the Arctic FMP includes species other than groundfish and the Arctic FMP allows issuance of EFPs for any type of fish resource occurring in the Arctic Management Area, the application of EFPs is revised to include Arctic fish.

4. In § 679.7, a prohibition is added to prevent commercial fishing for Arctic fish in the Arctic Management Area. A prohibition on commercial fishing for Arctic fish is necessary to implement the Arctic FMP prohibition on commercial fishing on either target or ecosystem component species.

5. In § 679.20(a), the optimum yield (OY) for commercial fishing for Arctic Management Area target species is added. The OY for commercial fishing is set at zero metric tons for each of the target species, as provided in the Arctic FMP. This revision is necessary to implement the OYs specified in the Arctic FMP.

6. Figure 24 to part 679 is added to show the Arctic Management Area as established by the Arctic FMP. This addition is necessary to clarify in the regulations the location of the Arctic Management Area and to differentiate the boundary of the Arctic Management Area from the Bering Sea and Aleutian Islands Management Area boundary shown in Figure 1 to part 679. The Chukchi Sea Statistical Area 400 remains with the Bering Sea and Aleutian Islands statistical and reporting areas in Figure 1 to part 679 until the Arctic FMP is amended to authorize a commercial fishery in the Arctic Management Area. The Council recommended not establishing subareas for fisheries management in the Arctic Management Area at this time due to the lack of information to inform the selection of subarea boundaries.

Comments and Responses

The comment periods for the NOA and the proposed rule for this action ended on July 27, 2009. Comments were received from members of the public, environmental organizations, tribal representatives, and fishing industry representatives, all of which supported the Arctic FMP and Amendment 29 to the Crab FMP. Eight environmental organizations' letters also enclosed form letters or petition signatures representing 35,852 individual commentors. Including each version of the form letters, NMFS received approximately 389 letters containing 48 unique comments. The following summarizes and responds to the 48 unique comments on the NOA for the Arctic FMP and Amendment 29 and on the proposed rule.

Comment 1: For Amendment 29 to the Crab FMP, the map needs to be corrected to show the northern boundary of the management area consistent with the text in the FMP amendment.

Response: The error in the northern boundary on the map is noted. Two lines appear on the map for the northern boundary. Only the northern most line should be shown. The text in the FMP amendment and the coordinates listed for Figure 1 of 50 CFR part 679 describe only the northernmost line, which is the effective boundary for the Crab FMP, according to the definition of Bering Sea and Aleutian Islands Area in § 679.2. The figure will be corrected with a future amendment to the Crab FMP.

Comment 2: In Section 4.2.2 of the Arctic FMP and in Section 8.1.2 of the EA, the oceanographic features of the Arctic Ocean should be corrected to describe upwellings from Barrow Canyon, rather than Beaufort Canyon.

Response: The error is noted. The correction was made in the EA and will be made in the Arctic FMP with a future amendment.

Comment 3: In the proposed rule, the definition of Arctic fish in conjunction with the definition of commercial fishing and subsistence fishing seems to allow an opportunity to fish commercially for Pacific halibut in Arctic waters. The prohibition under § 679.7(p) prohibits commercial fishing for Arctic fish which excludes Pacific salmon and Pacific halibut. Pacific salmon commercial fishing is prohibited by the Salmon FMP. The text of the prohibition could be changed to prohibit commercial fishing in the Arctic Management Area and in that manner include Pacific halibut.

Response: Pacific halibut commercial fishing is managed under regulations of the International Pacific Halibut Commission (IPHC), which do not allow harvest of Pacific halibut in the Arctic Management Area. In light of this existing limitation on commercial harvest of Pacific halibut, the Arctic FMP, developed by the Council, does not include a prohibition on commercial fishing for Pacific Halibut in the Arctic Management Area. NMFS concurs with the Council's conclusion that existing regulatory authority currently provides adequate conservation and management of Pacific halibut in the Arctic Management Area. Additional prohibitions on such fishing are not warranted at this time. Commercial fishing is a very broad term under the Magnuson-Stevens Act which applies to any kind of fish. The term ''Arctic fish'' is necessary to apply the prohibition on commercial fishing only to those species covered by the Arctic FMP. The prohibition text in the rule remains unchanged.

Comment 4: It is important to gather scientific information and data on significant marine habitat and fishery resources. These can be used to identify and protect sensitive Arctic marine habitat and the adjacent Bering Sea, before opening the Arctic Management Area to commercial fishing. Identification and protection of sensitive areas are critical to ensuring the long term sustainability of Alaska's fisheries. Consideration of the errors in gathering and using scientific information and data should be made in fisheries management in the Arctic.

The Arctic FMP should include a plan for regular monitoring with a consistent protocol for surveying in the Chukchi and Beaufort Seas. NMFS and the Council are encouraged to make arctic research a priority because of the changing environment. A suite of research priorities for the Arctic should be developed and forwarded to the North Pacific Research Board for its consideration.

Response: NMFS agrees that more information is needed to understand the Arctic marine environment and fishery resources. With global climate change, interest is increasing in the Alaskan Arctic regarding loss of sea ice and ecosystem effects that will alter the fish community. NMFS is participating in the Bering Arctic and Subarctic Integrated Survey and the Loss of Sea Ice Initiative to investigate and gather information to manage marine resources in the Bering Sea and Arctic Ocean and to formulate strategies in anticipation of the impacts of climate change on fisheries and the ecosystem. Additional information on research activities in the Bering Sea and Arctic Ocean is available from *http://www.afsc.noaa.gov*.

NMFS is also a sponsor of the International Arctic Fisheries Symposium scheduled for October 19 21, 2009, in Anchorage, Alaska. Participants will help identify current management regimes in the Arctic region and how relevant scientific and fisheries data can be used to inform future management decisions. NOAA also is working with Russia to observe physical and biological environmental changes in the Northern Bering Sea and Chukchi Sea and with Canada for continental shelf mapping. More information on NOAA Arctic research activities may be found at *http://www.arctic.noaa.gov/aro/*.

NMFS identifies the variability and known errors in data in all research activities, including stock assessments. These are important considerations in setting harvest levels for target species and for developing appropriate management measures. NMFS agrees that consistent surveying protocols, including consistency in methodology and timing, are important to reduce the potential for error and variability in data collection. A survey of the Beaufort Sea shelf fish and invertebrate resources completed by NMFS researchers in August 2008 may serve as a pilot study for future surveys in the area.

NMFS determines its research needs and resources for Alaska fisheries and direct research efforts based on priorities. These priorities are identified by working with the Council and consideration of management of present and future fisheries. Periodic and regular surveys of Arctic fish resources will be done as priorities and budget allow. NMFS will work with the Council to identify and prioritize research needs for all U.S. EEZ waters off Alaska, including the Arctic. The Council annually reviews its five-year research priorities, which currently include research in the Arctic. These priorities are shared with the North Pacific Research Board for its consideration in research planning. More information on the Council's research priorities may be found at *http://www.alaskafisheries.noaa.gov/npfmc/default.htm*

Comment 5: The current biomass estimates in the Arctic FMP cannot be relied on to reflect future baseline biomass. Biomass surveys were conducted in limited areas and limited time periods, and may over or under estimate biomass in the Arctic Management Area. Shifting temperature regimes and altered productivity and food webs may further affect standing stocks and variability.

Response: NMFS agrees that the combination of changing conditions and current information for biomass estimates provides limited support for future sustainable management of a commercial fishery in the Arctic. As described in Section 2.2.2 of the FMP, the collection of biomass and life history data sufficient for developing sustainable management measures will be required before any commercial fishery could be authorized.

Comment 6: The Department of Commerce should fully engage in international discussions on fishery management in the Arctic. Discussions with Russia and Canada are extremely important for coordination in the Arctic region, ensuring the conservation actions through the Arctic FMP are complemented by management actions taken in Russian or Canadian Arctic waters or by other nations in the international Arctic waters. The 2008 Senate Resolution 17 urges the United States to ''initiate discussions and take necessary steps with other Arctic nations to negotiate an agreement or agreements for managing migratory, transboundary, and straddling fish stocks in the Arctic Ocean and establishing a new international fisheries management organization for the region.'' The Arctic FMP will encourage the international negotiations called for in the resolution and sets the stage for the kind of cooperative efforts to make the prohibition on commercial fishing in U.S. waters truly effective. The Arctic FMP would more fully comport with this resolution if it

included the resolution's requirement to work with other Arctic nations on international fishing issues, including EEZ disputes; highly migratory and transboundary stocks; stock monitoring, assessment, and allocation; international agreements that prohibit fishing; and conservation of protected species. Discussion is required in the FMP on the implication of these issues for present and future EEZ boundary disputes. The Arctic FMP should include a discussion on the United States and Canada boundary disputes of the EEZ in the Beaufort Sea.

NOAA could collaborate with the U.S. Department of State's Office of Ocean and Polar Affairs to negotiate with government and tribal representatives to have a moratorium on commercial fisheries and other extractive industries in Arctic areas beyond the U.S. jurisdiction.

Response: NMFS is working with other organizations to engage in international discussions on Arctic fisheries management. See response to Comment 4 regarding the International Arctic Fisheries Symposium. The Arctic FMP is focused on the management of fisheries in the Arctic Management Area and is not a descriptive document of international issues regarding the published U.S. EEZ boundaries (60 FR 43825, August 23, 1995). Details of the border disputes and negotiations between the United States and Russia and Canada on Arctic fisheries management are detailed in the EA/RIR/FRFA for this action (see **ADDRESSES**) and are not repeated in the FMP. The Council may consider adding a discussion of the U.S. Senate resolution on the Arctic to the Arctic FMP by an FMP amendment.

Not enough is known about the target species stock structure at this time to determine whether highly migratory and transboundary stocks occur in the U.S. Arctic EEZ. More research and the sharing of abundance data and stock structure information with other Arctic nations may support international agreements in highly migratory and transboundary stock management. At the time a fishery is authorized, the FMP may be amended to include management measures that address issues of highly migratory and transboundary stocks, monitoring, assessment, allocation, and international agreements for conservation of stocks. The analysis accompanying the consideration of authorizing a commercial fishery would include these types of international considerations.

NMFS through NOAA and the Department of Commerce works closely with the U.S. Department of State's Office of Ocean and Polar Affairs to address international fishery issues between the United States and other nations. The U.S. Department of State is responsible for the coordination and negotiation with other nations regarding conservation of transboundary resources. The United States initiated discussions on the conservation and management of shared living marine resources separately with Canada and Russia in 2008. These discussions continue in 2009 and included discussions with Norway on Arctic high seas marine conservation policy issues in February 2009.

Comment 7: The U.S. Senate should ratify the United Nations Convention on the Law of the Sea. Other Arctic nations are ahead of the United States in ratifying this convention.

Response: Comment noted. Those interested in this issue may contact their U.S. Senators at *http://www.senate.gov/general/contact_information/senators_cfm.cfm.*

Comment 8: The U.S. Government should explain to the American people the issues with our fisheries so that Americans will understand the need to close the U.S. Arctic waters to commercial fishing.

Response: In addition to the **Federal Register** notice of the proposed rule (74 FR 27496, June 10, 2009) and the analysis to support this action (see **ADDRESSES**), NMFS Alaska Region's website has a page dedicated to Arctic issues. This information is available to the public at the NMFS Alaska Region website *http://www.alaskafisheries.noaa.gov/sustainablefisheries/arctic/* and at the Council website *http://www.alaskafisheries.noaa.gov/npfmc/current_issues/Arctic/arctic.htm*. These sources provide the public with the background and reasons for the Arctic FMP and its implementing regulations.

Comment 9: NOAA is captured by commercial fishing interests and fails to manage fish populations sustainably. The fishing quota allows too much fishing and should be reduced. Oceans are dangerously overfished by industrial fishing, which needs to be stopped. We must end depletion and damage to the ocean's wildlife. Humans need to learn to use less resources and reduce population growth. Industrial fishing damages ocean floor habitat and destroys many fish and wildlife species with indiscriminate use of giant gear and lines. Huge areas of plastic debris, including fishing gear, in the Pacific and other oceans injure and kill marine animals.

Response: This action is limited to the implementation of the Arctic FMP in the Arctic Management Area. The Arctic FMP will initially prohibit commercial fishing in the Arctic Management Area until information is available to sustainably manage Arctic fisheries. This action is supported by a wide range of interests, including commercial fishery participants. No Alaska fisheries are currently experiencing overfishing. Commercial fishing in the EEZ off Alaska is managed under regulations at 50 CFR parts 300, 600, 679, and 680, which impose many restrictions on the type of gear, location, vessel types, and timing of fishing activities so that indiscriminate use of fishing gear does not occur. Fishery regulations include provisions to reduce waste by improved retention and improved utilization of certain species under § 679.27 and to manage fishing to control and reduce bycatch of prohibited species under § 679.21. Alaska fisheries regulations include protection measures to mitigate potential adverse effects on other marine species and habitats. Examples of protection measures include areas closed to bottom contact gear to prevent damage to bottom habitat, areas closed to fishing around Steller sea lion rookeries and haulouts, and seabird avoidance gear used by hook-and-line fisheries to reduce the accidental catching of seabirds during fishing activities.

NMFS agrees that plastic debris, including discarded fishing gear, in the marine environment poses a threat to a variety of marine organisms through entanglement and ingestion. The National Ocean Service's Marine Debris Program is undertaking a national and international effort focusing on identifying, reducing, and preventing debris in the marine environment. More information on this issue is at the Marine Debris Program website *http://marinedebris.noaa.gov/*.

Comment 10: No commercial fishing should occur in the Arctic Management Area now or in the future because of the fragile nature of the area and the potential for the industry to degrade it.

Response: This rule prohibits commercial fishing for Arctic fish in the Arctic Management Area. Arctic fish do not include Pacific salmon or Pacific halibut, because these species are managed under other authorities. Pacific salmon is managed under the Salmon FMP, which prohibits commercial fishing for salmon in the Arctic Management Area. Pacific halibut commercial fishing is not permitted in the Arctic Management Area by authority of the International Pacific Halibut Commission.

Commercial fishing in the Arctic can be authorized only through an FMP amendment and changes in regulations. An extensive process and criteria for authorizing a fishery in the Arctic are detailed in the Arctic FMP and must be followed by the Council before recommending the authorization of a commercial fishery. The potential impacts of an Arctic fishery based on the best available scientific data must be considered in developing the management measures for any future Arctic commercial fishery.

Comment 11: The United States should implement regulations that close U.S. Arctic waters to trawlers both near shore and off shore within the EEZ.

Response: The Arctic FMP and the final rule prohibit commercial fishing for all fish, except Pacific salmon and Pacific halibut, in waters of the EEZ from 3 nm to 200 nm off Alaska in the Arctic Ocean. This prohibition includes commercial fishing using trawl gear in these waters. Waters from 0 nm to 3nm are under the authority of the State of Alaska (State) which authorizes several small fisheries in State waters as described in detail in Section 5.4 of the Arctic FMP. Trawls are not used in these State waters fisheries.

Comment 12: Overfishing is why we are considering the Arctic FMP.

Response: Currently, commercial fishing is not occurring and very little subsistence and sport fishing occurs in the Arctic Management Area . Based on information in the EA/RIR/FRFA (see **ADDRESSES**), overfishing is not occurring. This action is a precautionary approach to fisheries management to prevent the possibility of unregulated fishing that may result in overfishing of fish stocks.

Comment 13: Industrial fishing is particularly harsh and hard to manage in the Arctic. Mistakes take decades to remedy and other species pay a heavy toll for overharvest.

Response: NMFS agrees that commercial fishing in the Arctic would pose challenges to management that are not experienced in other locations in Alaska waters, due to the extreme remote location and harsh weather and sea ice conditions. Due to the paucity of information on the fish stocks in the Arctic, it is difficult to determine the potential effects of commercial fishing on marine resources or the recovery time. Any Arctic commercial fishing that may be authorized in the future will be based on information that would allow management to be done in a sustainable manner and with consideration of ecosystem effects. Management measures for the fishery would prevent overfishing, as required by the Magnuson-Stevens Act.

Comment 14: The Council system used to make decisions does not work. The members come to the meetings with decisions already made and represent big business. Big business representatives can afford to attend the Council meetings constantly. Remember small businesses are the economic engines.

Response: The Council public process for decision making has allowed effective management of Alaska fishery resources. The Council membership includes representatives from industry, state, and federal agencies, with the majority of the seats filled by persons recommended by the State of Alaska Governor and approved by the Secretary. Comments can be made to the Council early in the decision-making process in person and in writing for Council members' consideration. Thorough analysis of potential actions is reviewed in public by the Council's Scientific and Statistical Committee (SSC) and the Advisory Panel where public testimony is also taken. Written comments also are an effective method for expressing the concerns of persons unable to attend the Council meetings.

The Council recognizes the importance of the small vessel fleet and the communities that depend on them in Alaska fisheries and is required by National Standard 8 of the Magnuson-Stevens Act to take into account the importance of fishery resources to fishing communities. Analysis of fisheries management actions includes the potential effects of the action on small entities, including small businesses. This analysis is used by the Council in making recommendations and by the Secretary in approving or disapproving the recommendation. The EA/RIR/FRFA for this action contains the analysis of potential impacts on small entities (see **ADDRESSES**).

Comment 15: There should be no commercial fishing in the northern Bering Sea.

Response: The northern portion of the Bering Sea currently is closed to nonpelagic trawling. This closure was established as the Northern Bering Sea Research Area (73 FR 43362, July 25, 2008). Though this area is open to other types of commercial fishing (e.g. hook-and-line, pot, and pelagic trawling) very little fishing occurs in this area due to its distance from major ports and the distribution of fish stocks. Closure of the northern Bering Sea area to all commercial fishing is beyond the scope of this action.

Comment 16: It is a waste of taxpayer money to develop the Arctic FMP including EFPs when collection of the same information under an EFP could be done under the Magnuson-Stevens Act section 402(a).

Response: The purpose of the Arctic FMP is to provide a framework for sustainable management of fish resources in the Arctic Management Area. The FMP is needed not only for collection of information but also to authorize regulations to prevent unregulated fishing. The FMP also provides for EFPs as an information collection tool.

Information collection under the Magnuson-Stevens Act section 402(a) is used to determine if fisheries management is necessary or to determine whether changes need to occur in fisheries management for an existing FMP. This rule establishes fisheries management for the Arctic Management Area before commercial fishing occurs, as a precautionary approach to fisheries management in this sensitive marine environment. Allowing EFPs provides a mechanism for industry participation in collecting information important to Arctic fisheries management. Data collected under EFPs would be specific to the study conducted and would be collected in cooperation with the fishing industry. The information collection authority under section 402(a) does not fully meet the Council's and Secretary's objectives for sustainable management of Arctic fish resources. These objectives are met by approval of the Arctic FMP and this rule.

Comment 17: The argument that more prolonged ice-free periods is a reason for enacting an FMP ignores the fact that ice-free periods currently exist during fishing seasons and yet no fishing is taking place.

Response: The Arctic FMP is a precautionary action to protect Arctic fish resources from the potential adverse effects of unregulated fishing before such fishing occurs. NMFS agrees that commercial fishing is not currently known to occur in the Arctic Management Area, but with ice-free conditions expanding, there is more interest in all kinds of industrial activity in the Arctic Management Area, including commercial fishing. Waiting for commercial fishing to occur before establishing management measures would allow for unregulated fishing for up to two years as the Council and NMFS complete the process for implementing a new FMP. The additional ice-free time periods increase the interest in fishing and, therefore, warrant establishing fisheries management through the Arctic FMP now, before the occurrence of

unregulated fishing and the potential irreversible effects on the Arctic marine environment.

Comment 18: It is appropriate to develop an FMP that addresses species that are already known to occur in the Arctic, but a comprehensive FMP that covers species that may range into the Arctic is speculative and not needed. Species ranging out of the Bering Sea into the Arctic should already be covered by an existing FMP.

Response: Little is known about species ranging into the Arctic Management Area. Species lists have been developed based on limited survey information. An ecosystem component species group is used in the Arctic FMP to include those nontarget species currently known to occur in the Arctic and those species that may be discovered in the future. By identifying the ecosystem component species group, the FMP provides for management measures to protect these species. This provides the flexibility to protect ecosystem component species without the need to amend the Arctic FMP with specific species listings, which are likely to change as more information is gathered on Arctic fish resources.

Several Arctic marine species are known to occur in the Bering Sea and some of these species are managed under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area or under the Crab FMP. The management authority under the Bering Sea and Aleutian Islands groundfish FMP does not extend into the Arctic Management Area. Also, snow crab is managed in the Bering Sea under the Crab FMP. Amendment 29 to the Crab FMP limits the northern boundary of the Crab FMP management area to Bering Strait, which is the southern boundary of the Arctic Management Area. Management measures for snow crab in the Crab FMP are specific to the Bering Sea snow crab fishery located in the Bering Sea, which is a large, historical fishery. Compared to Bering Sea snow crab, snow crab in the Arctic are smaller in size with no historical commercial exploitation and uncertain population dynamics and abundance. Under the Arctic FMP, the management of this species is consistent with the precautionary approach to prohibit commercial fishing on target species until more information is available to allow for sustainable management in the Arctic.

Comment 19: We support the Council's action to recommend an FMP for an unfished area that has the potential for fisheries development because of climate change and the potential movement of fish species. We commend the Council, NOAA, and NMFS for protecting marine habitat, as well as subsistence users, until a sustainable management plan for commercial fishing in the Arctic Management Area is developed. We need to take responsibility for sustainable management to ensure a healthier environment and ocean diversity. Polar ecosystems take longer to recover, if at all, compared to other ocean ecosystems. Only careful preservation and management of what we have left will preserve the total environment on which all life depends, including humans. The Arctic marine ecosystem is a ''final frontier.''

We have seen the loss of important fisheries in the U.S. and around the world in our lifetimes, and it is time for a change in fishery management. We have the opportunity to learn from our past overfishing and protect this ocean treasure. Allowing unregulated commercial fishing will result in the decimation of fish stocks as seen everywhere unregulated fishing occurs. The Arctic marine environment needs fish to survive while humans do not need fish from this area. Humans can find other food sources of protein and omega 3 fatty acids without eating fish. Humanity's pattern has been to exploit first and regret later. The Arctic FMP is an opportunity to avoid that pathology. In the past, commercial interests took precedence over rational scientific management of resources and the environment. It is time to change our national misbehavior.

Response: Support noted. Humans living in the Arctic region and practicing a subsistence lifestyle are dependent on Arctic marine resources for their nutrition, including fish. This action will ensure Arctic fish resources, including those used for subsistence, are not adversely affected by unregulated commercial fisheries.

Comment 20: We urge the Secretary of Commerce to approve the FMP and to implement regulations to close U.S. Arctic waters to commercial fishing. The FMP and regulations would protect the birds and wildlife of the Arctic for future generations. This protection is important because of the fragile and changing nature of the Arctic marine environment.

Global climate change is having profound effects on the Arctic marine environment and on the people who depend on it. Seasonal sea ice cover is diminishing and ocean temperatures are increasing. These rapid changes are causing enormous stress to Arctic ecosystems. Marine mammals such as walruses, ice seals, and polar bears are struggling to adapt. Climate change is affecting the Arctic Ocean's role in providing breeding, feeding, migrating, and staging areas for millions of shorebirds, seabirds, and waterfowl. Arctic peoples' subsistence way of life is inextricably linked to healthy and productive marine ecosystems, and they are also threatened by these rapid changes. Introduction of commercial fishing into the Arctic environment would place an even greater burden on the fragile Arctic food web and the people and animals that rely on it for their survival.

Given the threats to the Arctic from climate change, ocean acidification, and industrialization from oil development, shipping, and other industries, we need a science-based precautionary approach to address the expansion of industrial activities, including commercial fishing in the Arctic Ocean. The Arctic FMP takes a responsible course that protects the health of the Arctic and its people and sets an important precedent for other nations and other industries to follow.

We support the establishment of the Arctic Management Area, establishment of target and ecosystem component species groups, and prohibition on commercial fishing until stock assessments are completed. By using the Council's public review and decision making process, future management actions in the Arctic will be in accordance with the Magnuson-Stevens Act and other applicable laws. Authorizing a commercial fishery will require amendment to the Arctic FMP, including analysis and public participation in the decision-making process with the Council. The Council should consider a committee process to develop further guidance and criteria for analysis of potential new fisheries, including conditions that would need to be addressed for authorizing a fishery in the Arctic Management Area. This process will ensure issues for fishery management and protection of the marine environment will be addressed. This public process will ensure sustainable fishery management.

Response: Support noted. At the time a potential Arctic commercial fishery is identified, the Council may appoint a committee to assist the Council in applying the review process outlined in Section 2.2.2 of the Arctic FMP. This committee could assist the Council to analyze the effects of the potential fishery and to develop recommended management measures. The Council's committees meet in public to assure public participation from the initiation of the potential commercial fishery review process.

Comment 21: Over the past 100 years, the Arctic has warmed twice as fast as the rest of the Earth. Since the 1950s, an area of the Arctic sea ice, the size of almost half the continental United States, has melted.

Response: NMFS acknowledges that the current and projected rate of sea ice reduction in the Arctic is of concern. The Arctic FMP reflects a precautionary approach to marine resource management that considers the uncertain impacts of climate change on the vulnerability of species to commercial fishing.

Comment 22: Several environmental organizations provided additional information and references to support the approval of the Arctic FMP and implementing regulations. The analysis and information in the EA/RIR/IRFA for this action sufficiently justifies implementation of the Arctic FMP and Amendment 29 to the Crab FMP. The additional information augments the administrative record for the decision. Additional information included further discussions on the unique communities and ecosystem of the Arctic and its role in regulating the Earth's climate, climate related changes and loss of sea ice, ocean acidification in the Arctic region, and the potential additional effects on the marine environment of increased industrial activity in the Arctic region.

Response: NMFS appreciates the additional information. It is included in the administrative record for future reference.

Comment 23: The Arctic FMP and Amendment 29 to the Crab FMP set the stage for thoughtful and science-driven deliberations for future fishery development in the Arctic. These deliberations should include active engagement with Arctic coast residents. Closing the Beaufort and Chukchi Seas to commercial fishing now will allow time for community input and consideration of local and traditional knowledge before commercial fishing is authorized. Because a mistake in the management of fisheries could have cascading effects that may harm subsistence and cultural traditions, a cautious approach to fisheries in the Arctic is warranted. Local communities should benefit from ecologically sustainable development off their coasts. The Council has made exceptional efforts to engage residents, communities, and organizations representing the people of the Arctic regarding the Arctic FMP. The Council has a strong outreach program and new committee to more fully engage Alaska's subsistence communities in fishery management.

Response: NMFS agrees that the Council has a strong outreach program and effectively engaged Arctic communities during the development of the Arctic FMP. Consideration of any new Arctic commercial fishery will include analysis of subsistence resources, harvest activities, and customary and traditional subsistence use patterns and how these may be affected by a new commercial fishery. In Section 3.20.1 of the Arctic FMP, periodic reviews of the FMP will be conducted by the Council, including public hearings and outreach to Natives and communities at appropriate times and in appropriate locations regarding ecological relationships and potential commercial fishery development and management. Information on the Council's Rural Community Outreach Committee is on the Council's website at *http://www.alaskafisheries.noaa.gov/npfmc/current_issues/RuralOutreach/RCOCreport81209.pdf.*

Comment 24: We do not understand the impact a commercial fishery may have on the Arctic region or on subsistence lifestyles in the Arctic. The Council has done a poor job of fairly allocating fish to commercial fishermen rather than to sport or subsistence users, sacrificing the benefits to many for the profits of a few.

Response: NMFS agrees that not enough information currently is available to understand the effects of a commercial fishery on the Arctic marine environment and on subsistence resources. Sport and subsistence fisheries in the Arctic occur primarily in State waters, where they are managed by the Alaska Department of Fish and Game. As done with Pacific halibut, the Council may review fisheries management of a stock, including the types of participants in the fishery, and may recommend commercial, sport, and subsistence allocations to ensure sustainable management of the fishery.

Comment 25: NMFS should engage in robust consultation with the Alaska Native tribes and their representatives with respect to the definition for subsistence fishing. The definition for subsistence fishing appears to meet the requirements for ensuring access to subsistence resources, but must be thoroughly vetted with the appropriate affected Alaska Native tribes to ensure that the definition is sensitive to Alaska Natives' needs.

Response: The definition for subsistence fishing in the rule is intended to maintain the current subsistence practices. On June 12, 2009, NMFS sent to each affected tribe a notice of the proposed rule, a copy of the proposed rule, and an offer for tribal consultation on the Arctic FMP and the proposed rule. None of these tribes responded requesting a consultation for this action. The section of the proposed rule describing the subsistence fishing definition specifically asked the public for suggestions on a better way to define subsistence fishing, and no suggestions were received during the comment period. NMFS will continue to work with Alaska Natives to keep them informed and involved in federal fisheries management actions.

Comment 26: The Arctic FMP should contain a process for scoping and resolving conflicts between indigenous and commercial use of fishery resources. The Arctic FMP lacks a discussion of potential conflicts between commercial and subsistence use and does not describe a process to identify and resolve such conflicts should a commercial fishery develop.

Response: The Council has appointed the Rural Community Outreach Committee to (1) advise the Council on how to provide opportunities for better understanding and participation from Alaska Native and rural communities; (2) to provide feedback on community impacts sections of specific analyses; and (3) to identify proposed Council actions that need a specific outreach plan and prioritize multiple actions. This committee will provide guidance to the Council on effective methods of scoping and resolving conflict between indigenous and subsistence uses and commercial uses of fishery resources in the Arctic and in other Alaska locations.

Comment 27: The Arctic FMP should specify subsistence fisheries bycatch caps for target species based on the best available science. Subsistence fisheries may increase with expanding access to the Arctic and changes in species distribution and bycatch hotspots. Increases in subsistence fisheries may result in increases in bycatch of target species, which the FMP currently does not address.

Response: NMFS currently does not have enough information to determine the species for which to set bycatch caps in the subsistence fisheries nor the appropriate level of such caps. If information becomes available that indicates a need to regulate harvest in subsistence fisheries, an FMP amendment would be required to change the FMP to govern non-commercial fisheries. Also see response to Comment 24.

Comment 28: The Arctic FMP should include a commitment to characterize sensitive habitats and to protect such habitats by establishing habitat areas of particular concern (HAPCs) and marine protected areas (MPAs). MPAs could

provide important baseline information for fisheries management. Opening any new fishery should include establishing a network of MPAs to ensure a large portion of the Arctic marine biodiversity is protected. Areas should only be opened to fishing if habitats and fish stocks are sustainable and the effects on the associated ecosystem are acceptable. Shallow and deep water areas should be characterized. Marine reserves have proven effective elsewhere.

The Arctic should be designated as an international sanctuary, protected for all of the world's benefit.

Response: Marine reserves and MPAs are important tools in marine resource management and are used effectively in other locations of the United States and the world. This action closes the Arctic Management Area to commercial fishing until more information on the marine resources can be determined. Current information does not support the need for a marine reserve or MPA, and effective conservation of marine resources can be accomplished at this time through the commercial fishery closure. If future information indicates that more effective management of all or part of the Arctic Management Area could be achieved through marine reserves or MPAs, the Council could recommend such action. Any consideration of MPAs and HAPCs is likely to include information on a variety of habitats that may be affected by fishing, including shallow and deep waters. Section 4.1.3.3 of the Arctic FMP includes the Council's process and criteria for considering potential HAPC sites in the Arctic Management Area.

The request to establish an international sanctuary throughout the Arctic Ocean is beyond the scope of this action.

Comment 29: Recently, massive oil and gas leasing, exploration, and development has occurred in the Beaufort and Chukchi Seas. This activity has occurred despite very little being known about the marine ecosystem of the Arctic Ocean and the inability to predict potential consequences of such activities on the environment. Despite the biological baseline knowledge and regardless of concerns of the NMFS, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency, the Minerals Management Service has moved forward with oil and gas leasing, exploration, and development.

Response: Management of oil and gas resources is outside the scope of this action. NMFS will continue to work with the Minerals Management Service to identify potential effects and mitigation measures for Arctic oil and gas leasing, exploration, and development, consistent with NMFS responsibilities under the Endangered Species Act (ESA), Marine Mammal Protection Act, National Environmental Policy Act (NEPA), and the Magnuson-Stevens Act with respect to essential fish habitat (EFH).

Comment 30: NOAA should actively engage in discussions on drilling or mining industries on the Arctic seafloor and advocate a moratorium on such activity.

Response: Arctic drilling and mining is outside the scope of this action. See response to Comment 29.

Comment 31: The Arctic FMP's conservation and management measures are in full compliance with the Magnuson-Stevens Act and consistent with the conservation and management mandate of the Magnuson-Stevens Act. The FMP prioritizes long-term viability of fish populations by preventing unregulated fishing and by accounting for scientific uncertainty. Amendment 29 to the Crab FMP allows for consistent application of conservation and management measures in the Arctic Management Area. The Magnuson-Stevens Act allows for conservation and management measures that prohibit fishing. Because of the lack of baseline information on the Arctic marine environment, scientific uncertainty, and the pace and scale of changes in the Arctic, the Magnuson-Stevens Act authorizes a precautionary ban on commercial fisheries to achieve conservation and management policies. The Arctic FMP provides environmental and cultural protection while allowing for a respectable amount of economic yield.

Response: Support noted.

Comment 32: The conservation and management measures in the FMP are based on the best scientific information available and are consistent with the National Standards of the Magnuson-Stevens Act. The Council is using an ecosystem approach to management by identifying target and ecosystem component species in the FMP. National Standard 1 provides for the use of ecosystem component species in the FMP, which are not required to have status determination criteria and reference points for fisheries management. The FMP sets status determination criteria and reference points for the target species, as required by National Standard 1 guidelines (74 FR 3178, January 16, 2009). The lack of information and uncertainty is addressed in the setting of OY, as required by National Standard 1 guidelines. Control rules for future fisheries planning are part of the FMP.

Response: Support noted.

Comment 33: Taking a proactive approach to fishery management in the Arctic will likely avoid conflict with industry and other management entities. Providing the management measures before authorizing commercial fishing will allow for effective management when commercial fishing commences.

Response: NMFS agrees that working with industry in the development of a commercial fishery is likely to result in effective management measures that the industry will be prepared to meet once commercial fishing is authorized.

Comment 34: The proposed rule raises concerns about the ability to effectively detect incursion into the closed Arctic fishery management area, and then to be able to take effective enforcement action. The Arctic is a large area from a closed area enforcement perspective. This area is well beyond the areas routinely patrolled by the U.S. Coast Guard (USCG). The USCG has relatively few vessels with the ability to operate in the Arctic, and these are based far from the region resulting in a significant response time. Lack of infrastructure in the region makes it difficult to resupply vessels and limits the ability of many vessels to remain in the region. Without electronic monitoring of vessels operating in the close vicinity of the Arctic Management Area, it may be impractical to expect consistent enforcement of this vast closed area with presently available resources. Additionally, it is a concern that using a vessel monitoring system (VMS) is not specifically mentioned as a vessel requirement once fishing is authorized.

Response: NMFS acknowledges the challenges of enforcing fishery regulations under the difficult operating conditions in this remote region with its limited infrastructure. VMS is an efficient and effective tool for monitoring fishing vessel activities with respect to closure areas. Significant portions of the U.S. commercial fishing fleet are already subject to VMS requirements in the southern part of the Arctic Management Area. Sections 679.7(a)(18) and 679.28(f)(6)(i) require vessels endorsed for Atka mackerel, Pacific cod, or pollock fisheries to operate a VMS unit when they are operating in any federal reporting area and the vessel's authorized species and gear type is open to directed fishing. Important fisheries for pollock and Pacific cod are open much of the summer and early fall, when significant commercial fishing north of Bering Strait is most likely. Section 680.23(d) requires vessels with a federal crab vessel permit in a crab fishing year to

operate a transmitting VMS when they are operating with crab pots, crab hauling equipment, or a crab pot launcher on board in any reporting area off Alaska.

In Figure 1(b) to 50 CFR part 679, the southern Chukchi Sea is designated Statistical Reporting Area 400. Statistical Area 400 is defined as the area north of a diagonal line between 66° 00′ N, 169°42.5′ W (Cape Dezhneva, Russia) and 65°37.5′ N, 168°7.5′ W (Cape Prince of Wales, Alaska) and to the limits of the U.S. EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part). The northern edge of this chart lies at 68°00′ N. This chart covers the southern Chukchi Sea, including federal waters within Kotzebue Sound. Thus, VMS requirements extend into part of the Arctic Management Area.

The FMP recognizes that monitoring and enforcement measures necessary and appropriate to ensure sustainable management and conservation of Arctic fish stocks may be required and that these may include the use of observers, electronic logbooks, VMS, or other measures that will be specified in regulations. The Council could recommend a VMS requirement for any fishing vessels operating in or near the Arctic Management Area prior to or with the authorization of a commercial fishery.

Comment 35: The Arctic FMP process for authorizing a new fishery should also consider available USCG search and rescue capacity and vessel safety. Current search and rescue capacity is low and may present a significant danger for vessels operating in the Arctic Management Area.

Response: NMFS agrees that search and rescue capacity and vessel safety are important considerations in fishery management. This type of information was summarized in the Regulatory Impact Review prepared for the Arctic FMP (see *ADDRESSES*) and will be updated to support any future amendment to the FMP that authorizes commercial fishing.

Comment 36: NMFS and the Council should develop criteria for potential new fisheries in the Arctic.

Response: Section 2.2.2 of the Arctic FMP contains the process and criteria for authorizing a commercial fishery. This section describes the review process to be used by the Council and the criteria to be analyzed for considering the authorization of a fishery in the Arctic Management Area. Any additional criteria for a potential new fishery would be developed at the time of consideration, based on the best available scientific information regarding the fishery, the Arctic marine environment, and fisheries management.

Comment 37: The process of identifying new stocks in the Arctic FMP may be inadequate. Listing a target species does not trigger the collection of fishery and survey data sufficient for tier 3 assessment in a defined time period. These species may be vulnerable to exploitation because the opening of a fishery only requires a change in the OY and does not trigger a formal process based on new data.

Response: The process of identifying new target species stocks under Section 3.4 of the Arctic FMP is a separate process from the consideration of authorizing a commercial fishery under Section 2.2.2. It is not necessary to gather tier 3 level information on a target stock if no commercial fishery is authorized for that stock. Authorizing a commercial fishery would require not only a change in the OY, but also completion of the review and implementation process listed under Section 2.2.2, including FMP amendment and promulgation of regulations to implement necessary management measures. The change in OY would require a greater certainty in the information used to determine OY. This process ensures that a commercial fishery would not be authorized unless sustainable management is implemented based on the best available science.

Comment 38: The final rule and Arctic FMP should include tables of in-depth descriptions of the tier system used for allowable harvest and status determination for finfish, as is done for crab species.

Response: Although not identified as a table per se, Section 3.8.1 of the Arctic FMP includes a detailed description of the finfish tier system that specifies each of the control rules, along with accompanying text that describes the parameters and terms utilized in the finfish tier system. Additional descriptions of terms, such as FOFL and B, are provided in Section 3.6.1 of the Arctic FMP and under the ''Acronyms and Abbreviations Used in the FMP.'' NMFS agrees that presenting this information in tabular form along with a tabular guide in the FMP could facilitate understanding of the tier method for finfish fisheries management. Prior to making an amendment that would authorize a commercial fishery, the Council could consider amending the Arctic FMP specifically to add finfish tier tables similar to the crab tier tables.

As described in the response to Comment 39, the finfish tier system will not be implemented unless and until the Council amends the FMP to authorize commercial fishing for finfish. The tier method is the policy that may be used for stock assessments and the setting of harvest levels and status determination criteria in the management of the fisheries that may be authorized in the future. Regulations primarily contain the requirements currently applicable to fishery participants rather than management policy, which is described in the FMPs. The regulations do not contain tables describing the tier systems for fisheries management, and no changes are made to the regulations to add this information.

Comment 39: We support a precautionary approach to setting acceptable biological catch (ABC) and annual catch targets (ACT) based on consideration of science and management uncertainty. The policy in the FMP would require lower catch limits based on uncertainty, providing an incentive to collect information that could lead to less need for precautionary ABC and ACT amounts. This would allow the tiers used for setting harvest amounts to better conform to the Magnuson-Stevens Act National Standard 1 and provide information towards achieving at least tier 3 in a defined period of time for a new fishery. The Arctic FMP lacks policies to provide priorities and incentives for research to address uncertainties and to tie harvest control rules explicitly to uncertainty. ABCs and ABC control rules should be adjusted from overfishing levels (OFLs) based on scientific uncertainty and ACLs and ACTs should be adjusted based on management uncertainty. The tiers should be adapted to include adequately precautionary buffers tied to uncertainty for all tiers.

Response: The Arctic FMP does not call for OFLs, ABCs, or total allowable catch levels (TACs) to be established for any species of Arctic fish at this time. TACs are equivalent to ACTs described in the National Standard 1 Guidelines (74 FR 3178, January 16, 2009). It would be highly speculative, if not impossible, to determine, in the abstract, whether the buffers between OFL, ABC, and TAC that may be established for a hypothetical future fishery would adequately account for scientific and management uncertainty.

Currently, the Arctic FMP and this rule adequately account for uncertainty and provide ample incentives for research to reduce uncertainty. The Arctic FMP initially prohibits commercial fishing for all species of Arctic fish, and this rule implements that prohibition. One of the principal

justifications for this broad prohibition is that the impacts of such fishing would be too uncertain to ensure that the fishery is managed sustainably, based on information currently available. Section 3.21 of the Arctic FMP describes the Council's process for developing the 5-year research plan for the Arctic, including improving the scientific understanding of fish stocks. Improving scientific understanding likely will reduce the scientific uncertainty that is applied to the setting of future ABCs. As described in Section 3.10, the FMP contains accountability measures and mechanisms that are specific to the prohibition of commercial fishing in the Arctic Management Area. As described in Section 3.8, harvest control rules beyond the prohibition of commercial fishing are not needed at this time as no harvest is authorized. The Arctic FMP and this rule establish an optimum yield (OY) of zero for commercial fishing for Arctic fish, based in part on uncertainty. It would not be possible to further limit the commercial harvest of Arctic fish to account for additional uncertainty at this time.

Unless and until the FMP is amended to authorize a commercial fishery based on new information, the ABC control rules and the process for setting ABCs and TACs set forth in the FMP will not be implemented. Any such amendment would be accompanied by an analysis of the impacts of the commercial fishing to be authorized thereby, which would include an assessment of whether the applicable control rule adequately accounts for uncertainty in establishing the buffers between OFL, ABC, and TAC given the particular information available for the fishery that is being authorized, or is otherwise adequate to prevent overfishing. Moreover, additional harvest control rules may be added to the FMP at that time and development of such rules would include the consideration of uncertainty using the best available scientific information.

Currently, the Arctic FMP includes scientific and management uncertainty in its framework for setting future ABCs and TACs, respectively, as described in Sections 3.2, 3.8, and 3.9.1. The tier process for setting ABCs includes scientific uncertainty by assigning tiers based on the information available for determining ABC. The type of information available influences the amount of ABC available with less certain information resulting in more conservative ABC amounts. For each of the tiers, the control rules in the Arctic FMP include a buffer between ABC and OFL, which accounts for some uncertainty. In most instances, the control rules afford the Council flexibility to further reduce ABC relative to OFL to account for any additional uncertainty. NMFS has determined that the catch limits implemented under the Arctic FMP at this time will prevent overfishing and that the tier system described in the Arctic FMP may be applied consistent with the National Standard 1 Guidelines, including accounting for scientific and management uncertainty in the setting of ABCs and TACs. At the time a commercial fishery is considered for the Arctic Management Area, the tier system will be reviewed to ensure the best management practices are applied to the fishery, including addressing uncertainty in management decisions.

Comment 40: The Arctic FMP should include a management framework that accounts for all types of fish catch (commercial, subsistence, and recreational) and provides for the needs of managed species such as marine mammals and seabirds.

Response: Section 3.9.2 of the Arctic FMP lists the information required in the Stock Assessment and Fishery Evaluation report. Estimates of fishery mortality include commercial, recreational, and subsistence catches. NMFS is working with the State of Alaska to gather information on recreational and subsistence catch, which mostly occurs in State waters. At the time an authorized commercial fishery is considered, the needs of subsistence and recreational fisheries, and marine mammals and seabirds and the potential impacts on these species will be considered in the development of management measures. The development of these management measures will need to be specific to the commercial fishery authorized to ensure efficient and effective measures are used.

Comment 41: If commercial fishing is opened in the Arctic Management Area, the Council and NMFS should consider catch share management to prevent stock collapse and improve stewardship of the fishery resources at the outset of commercial fishing. If Alaska Native communities choose to participate in Arctic water fisheries, they should have priority for allocation of harvest amounts.

Response: Catch share programs have been effectively used in the sustainable management of a number of fisheries of the United States. The use of a catch share program in the Arctic that includes Alaska Native community participation and priority could be considered by the Council during development of a commercial fishery. Section 3.16 of the Arctic FMP states that once a commercial fishery is authorized, the Arctic FMP could be amended to include a share-based program.

Comment 42: Section 679.6 should include language that prohibits the use of fishing history under an EFP for purposes of determining future allocations of harvest amounts. Allowing history through EFP fishing would create an unfair advantage in securing limited future fisheries allocations in the Arctic.

Response: The Council would determine what catch history can and cannot be used as a basis for eligibility in potential future catch share programs. Any future fisheries allocations would have to comply with National Standard Four, which requires an allocation of fishing privileges to be fair and equitable.

Comment 43: NMFS must be careful in its decisions to authorize EFPs in the Arctic Management Area. An EFP applicant must demonstrate a valid experimental design based on science. NMFS must evaluate the potential impacts of the EFP activity and ensure it is consistent with the precautionary approach and ecosystem principles for the Arctic Management Area, as recommended by the Council.

Response: NMFS follows the procedures in § 679.6 and § 600.745 for the review and issuance of EFPs (74 FR 42786, August 25, 2009). This process includes the review of the project by the Alaska Fisheries Science Center and consultation with the Council, including review by their SSC and the public. NMFS is careful to ensure the work under the EFP is designed to provide information useful to fisheries management and that the goal of the project is consistent with the management principles under the FMP. Any potential effects from the proposed study are analyzed in the appropriate National Environmental Policy Act (NEPA) and ESA documents, which are available for Council and public consideration before issuance of an EFP.

Comment 44: The Arctic FMP EFH description should include a discussion on changing oceanographic conditions that may affect EFH. Known and potential sensitive habitats and the potential for HAPC designation, and information needs for EFH and HAPC characterizations should be thoroughly explored.

Response: The description of EFH in the Arctic FMP is based on the best available scientific information. EFH designations are based on data from the 1980s regarding species distribution. More recent information is not yet

available to support a robust discussion on the effects of current or future oceanographic conditions on EFH. A more detailed discussion of EFH and unique Arctic habitats is in the EA/RIR/FRFA for this action (see **ADDRESSES**). As more information becomes available, this kind of analysis can be included in the NEPA analyses to support fishery management actions in the Arctic Management Area and can be considered in the Council's review of potential HAPC sites, as described in Section 4.1.3.3 of the Arctic FMP.

Comment 45: The non-fishing impacts discussion for EFH does not include the potential impacts of energy development. The section on oil and gas development in Appendix C should mention that fish attracted to habitat provided by oil and gas underwater structures may be vulnerable to fishing due to concentration of the fish at these sites. The increase in search and rescue activities in the Arctic Management Area may lead to port expansion and should be discussed under Vessel Operations and Marine Transportation.

Response: The first topic in Appendix C of the Arctic FMP covers the potential impacts of energy development. This section describes the potential impacts of oil and gas exploration, development, and production on EFH and includes a discussion of the attraction of fish and invertebrates to oil and gas underwater platforms and how the removal of these platforms may impact these species. The vulnerability of fish stocks to fishing near oil and gas facilities would depend on the vessel restrictions surrounding these structures and the dependence of the fish stock on the habitat provided by the structure. It is unknown whether increases in search and rescue operations would occur or lead to port expansion in the Arctic, and therefore these speculative impacts are not discussed in the FMP. As more information on non-fishing activities becomes available, the associated impacts on EFH could be described in subsequent amendments to the Arctic FMP.

Comment 46: Low cost loans or subsidies for fish farms in every state should be made available.

Response: Fish farming is not within the scope of this action.

Comment 47: Limited fishing should occur in the Arctic.

Response: Based on the limited information available on targeted species, the Secretary determined that no commercial fishing should occur in the Arctic Management Area until information is available to sustainably manage the stocks. Because subsistence fishing may occur in the Arctic and State waters fisheries and is not affected by this action, limited fishing may continue in the Arctic Management Area, as historically practiced.

Comment 48: The over 10–mile-long algal biomass that occurred in the Arctic in Summer 2009 has never been seen before in these waters and should serve as a warning to us to think before we fish in such a fragile environment.

Response: NMFS agrees that much remains to be learned about the Arctic marine environment, its responses to the changing climate and human impacts, and the potential recovery from any adverse effects. These issues need to be considered in the development of any commercial fishing regulations so the potential impacts of such activity can be determined and understood before fishing commences.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this final rule is consistent with and necessary to implement the Arctic FMP and Amendment 29 to the Crab FMP, and is in accordance with other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA describes the economic impact of this action on small entities. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA and NMFS responses to those comments, and a summary of the analyses completed to support the action. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis are included earlier in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

A summary of the IRFA was provided in the classification section to the proposed rule (74 FR 27498, June 10, 2009), and the public was notified of how to obtain a copy of the IRFA. The public comment period ended on July 27, 2009. No comments were received on the IRFA or on the economic impacts of the rule.

This action regulates commercial fishing for fish resources and does not regulate subsistence, recreational, or personal use fishing in the action area. Currently, only one unverified, small, and poorly documented commercial fishery for red king crab potentially exists in a portion of the Arctic Management Area in Kotzebue Sound.

A survey of the Alaska Department of Fish and Game fish ticket database back to 1985 identified a single fish ticket for this fishery. The ticket was for a very small amount of red king crab delivered in the summer of 2005. However, to the extent that fishing has occurred, landings in this fishery may not always have been reported on official state landings records (i.e., not legally recorded). The waters in which this fishery may have occurred were set apart from other waters for reporting purposes in 2005. From 2005 to 2007, three or four persons acquired the State of Alaska K09X permits that are required to fish commercially in this area. With the exception of the single anomalous fish ticket cited above, no commercial fish landings have been reported from the action area during 2005 through 2007. Thus, the number of permit holders, rather than the number of operations with fish tickets, is assumed to best represent the potential number of entities directly regulated by this action. All of these operations are believed to be small entities with annual gross revenues under $4 million.

The Council considered four alternatives and three options for this action. The options have no effect on directly regulated small entities as the options are limited to different scientific and administrative processes for developing management measures for fisheries. Each option resulted in the same effect on directly regulated small entities, because each would implement a management framework that initially prohibits commercial fishing in the Arctic Management Area.

Alternative 1 is the status quo which would have allowed for the potential for unregulated commercial fishing to occur in the Arctic Management Area. Alternative 1 was not chosen as it did not meet the objectives of the action to sustainably manage commercial fisheries in the Arctic Management Area.

Alternatives 3 and 4 would have provided different mechanisms to provide for sustainable management of fish resources in the Arctic Management Area, but each alternative excluded the small red king crab fishery in Kotzebue Sound from Arctic FMP management. Alternative 3 would have exempted the red king crab fishery from the Arctic FMP and from the Crab FMP while Alternative 4 would have provided for the continued management of the small red king crab fishery under the Crab FMP. Neither Alternative 3 nor

Alternative 4 were chosen based on the lack of evidence of a currently existing small red king crab fishery in the Kotzebue Sound area and on the lack of information to ensure sustainable management of the potential red king crab stock in the Kotzebue Sound while not affecting subsistence use of the resource. Alternatives 1, 3, and 4 had no known impacts on directly regulated small entities.

Alternative 2 was chosen as the preferred alternative as it fully meets the objective to provide sustainable management for all fish resources of the Arctic Management Area. Alternative 2, which implements a management framework that initially prohibits all commercial fishing in the Arctic Management Area, initially prohibits future crab fishing that may otherwise take place in the small and poorly documented fishery in Kotzebue Sound, until stocks have been assessed and harvest specifications are established. At that time, an amendment to the Arctic FMP could be proposed to authorize commercial fishing. Based on permit issuance, it is possible that two to four small entities may annually fish in the small red king crab fishery in Kotzebue Sound. Permit issuance does not necessarily indicate fishing activity, and only one fish ticket exists from this fishery since 1985. Income from this fishery is likely to be small.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The FRFA did not reveal any federal rules that duplicate, overlap, or conflict with the action.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a website that provides easy access to details of this final rule, including links to the Arctic FMP, Amendment 29, the final rule, and maps of Arctic Management Area and essential fish habitat. The relevant information available on the website is the Small Entity Compliance Guide. The website address is *http://alaskafisheries.noaa.gov/sustainablefisheries/arctic*. Electronic copies of this final rule also are available upon request from the NMFS, Alaska Regional Office (see **ADDRESSES**).

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law (P.L.) 108–199 (188 Stat. 452), as amended by section 518 of P.L. 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS contacted tribal governments and Alaska Native corporations which may be affected by this action, provided a copy of the proposed rule, and offered them an opportunity to consult. No requests for consultation were received.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 28, 2009

Samuel D. Rauch III,

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

■ For reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108 447.

■ 2. In § 679.1, add paragraph (l) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(l) *Fishery Management Plan for Fish Resources of the Arctic Management Area*. Regulations in this part govern commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States (see this subpart and subpart B of this part).

■ 3. In § 679.2, add in alphabetical order definitions for ''Arctic fish'', ''Arctic Management Area'', ''Commercial fishing, paragraph (3)'', and ''Subsistence fishing'' and revise the definitions for the ''Bering Sea and Aleutian Islands Area'', ''Management area'', and ''Optimum yield, paragraph (2)'' to read as follows:

§ 679.2 Definitions.

* * * * *

Arctic fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, Pacific salmon, and Pacific halibut.

Arctic Management Area, for purposes of regulations governing the Arctic Management Area fisheries, means all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 U.S./Russia maritime boundary line and eastward to the U.S./Canada maritime boundary (see Figure 24 to this part).

* * * * *

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial king and Tanner crab fisheries in part 680 of this Chapter, means those waters of the EEZ off the west coast of Alaska lying south of the Chukchi Sea statistical area as described in the coordinates listed for Figure 1 to this part, and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164° 44′36″ W. long).

* * * * *

Commercial fishing means:

* * * * *

(3) For purposes of Arctic fish, the resulting catch of fish in the Arctic Management Area which either is, or is intended to be, sold or bartered but does not include subsistence fishing for Arctic fish, as defined in this subsection.

* * * * *

Management area means any district, regulatory area, subpart, part, or the entire GOA, BSAI, or Arctic Management Area.

* * * * *

Optimum yield means:

* * * * *

(2) *With respect to the groundfish and Arctic fisheries*, see § 679.20(a)(1).

* * * * *

Subsistence fishing for purposes of fishing in the Arctic Management Area means the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

* * * * *

■ 4. In § 679.6, revise paragraph (a) to read as follows:

§ 679.6 Exempted fisheries.

(a) *General*. For limited experimental purposes, the Regional Administrator

may authorize, after consulting with the Council, fishing for groundfish or fishing for Arctic fish in the Arctic Management Area in a manner that would otherwise be prohibited. No exempted fishing may be conducted unless authorized by an exempted fishing permit issued by the Regional Administrator to the participating vessel owner in accordance with the criteria and procedures specified in this section. Exempted fishing permits will be issued without charge and will expire at the end of a calendar year unless otherwise provided for under paragraph (e) of this section.

* * * * *

■ 5. In § 679.7, add paragraph (p) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(p) *Arctic Management Area.* Conduct commercial fishing for any Arctic fish in the Arctic Management Area.

■ 6. In § 679.20, revise the introductory paragraph and paragraph (a)(1) to read as follows:

§ 679.20 General limitations.

This section applies to vessels engaged in directed fishing for groundfish in the GOA and/or the BSAI and to vessels engaged in commercial fishing for Arctic fish in the Arctic Management Area.

(a) * * *

(1) *OY* (i) *BSAI and GOA.* The OY for BSAI and GOA target species and the ''otherspecies'' category is a range or specific amount that can be harvested consistently with this part, plus the amounts of ''nonspecified species'' taken incidentally to the harvest of target species and the ''other species'' category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(A) The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 million to 2.0 million mt.

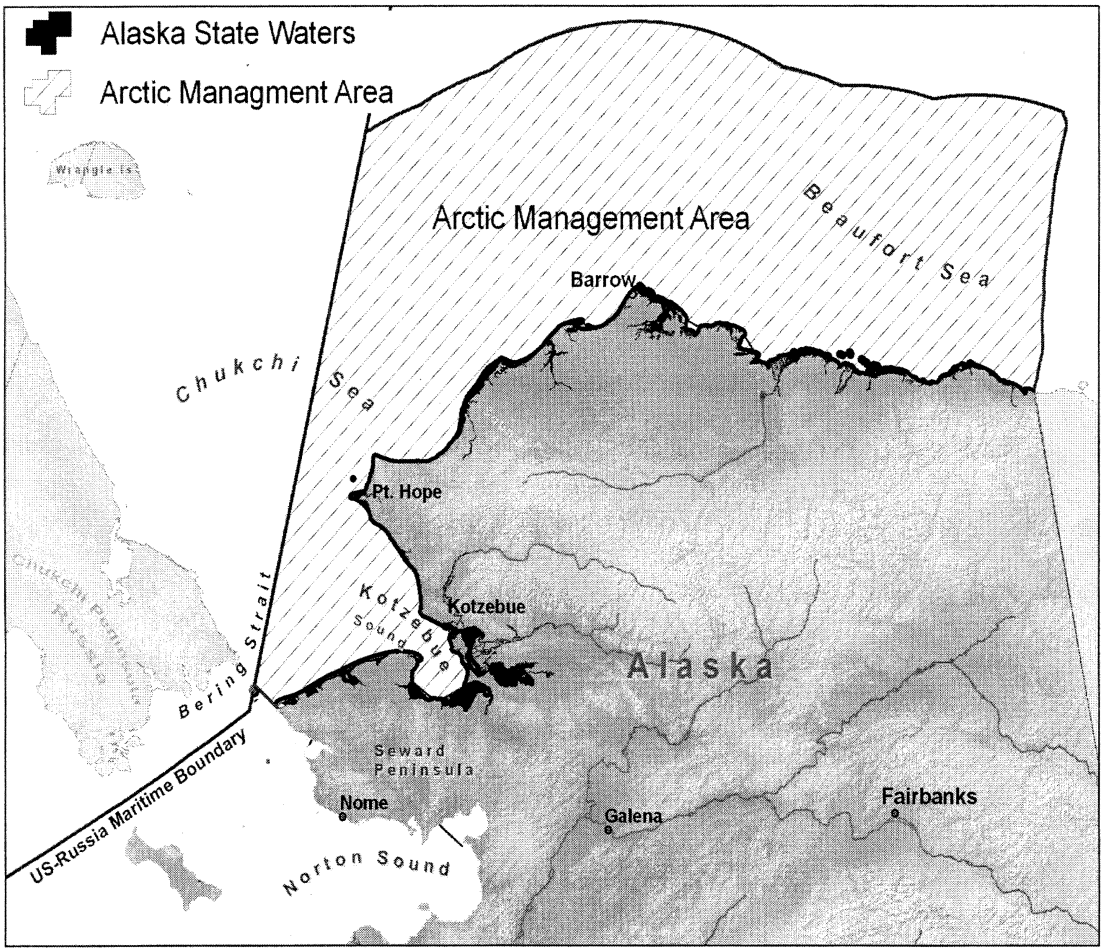
(B) The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

(ii) *Arctic Management Area.* The OY for each target fish species identified in the Fishery Management Plan for Fish Resources of the Arctic Management Area regulated by this section and by part 600 of this chapter is 0 mt.

* * * * *

7. Figure 24 is added to part 679 to read as follows:

Figure 24 to Part 679– Arctic Management Area



[FR Doc. E9–26452 Filed 11–2–09; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 211
Tuesday, November 3, 2009

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 731

RIN 3206–AL90

Suitability

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to assist agencies in carrying out new requirements to reinvestigate individuals in public trust positions under Executive Order 13488, *Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust,* to ensure their continued employment is appropriate. This proposed rule would implement the suitability reinvestigation provisions of E.O. 13488.

DATES: Comments must be received on or before January 4, 2010.

ADDRESSES: You may submit comments, identified by ''3206–AL90,'' using either of the following methods: *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. *All Mail:* Ana Mazzi, Deputy Associate Director, Center for Workforce Relations and Accountability Policy, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Lisa McGlasson, Senior Advisor, U.S. Office of Personnel Management, Center for Workforce Relations and Accountability Policy, 1900 E St., NW., Room 7H28, Washington, DC 20415–4000; fax to 202–606–2613; e-mail to *CWRAP@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2009, President George W. Bush signed Executive Order 13488, which provides that individuals in public trust positions shall be subject to reinvestigation under standards determined by the Director of the Office of Personnel Management (OPM) to ensure their continued employment is appropriate. The order provides that the standards issued by OPM shall include the frequency of reinvestigations. E.O. 13488 is distinct from but complements E.O. 13467, concerning alignment, to the extent possible, of security and suitability standards.

Public Trust Positions

Public trust positions are those covered by 5 CFR part 731 which an agency head, under 5 CFR 731.106, has designated at a moderate or high risk level, based on the position's potential for adverse impact on the efficiency or integrity of the service. Such positions may involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities, or other duties demanding a significant degree of public trust, or access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain. Designation of public trust positions and their risk level is made by agencies following OPM guidance and taking into account the specific duties of each position.

Frequency of Reinvestigations

While a reinvestigation typically will be more limited than the initial investigation, that reinvestigation must occur frequently if agencies are to carry out the purpose of the Executive order—to ensure that continued employment of persons in public trust positions remains appropriate. Accordingly, the proposed rule would require, at 5 CFR 731.106(d)(1), that a person occupying a public trust position be reinvestigated at least once every five years. Contingent on future investigative and resource capacities, OPM supplementary guidance will adjust investigative frequencies within this 5-year period based on the level of trust (*i.e.,* either moderate or high risk) associated with a person's position. We specifically solicit comment on whether a periodic reinvestigation cycle of 5 or fewer years is appropriate, considering the risk posed by employment in public trust positions, and the availability of investigative and adjudicative resources. We will consider comments on this proposed rule and consult with affected agencies in developing supplemental guidance on investigative frequency.

At 5 CFR 731.106(d)(2), the proposed rule would provide that an investigation or reevaluation to determine a person's initial or continued eligibility for access to classified information, which is conducted at an equal or higher level than required for their public trust reinvestigation, satisfies the 5-year reinvestigation requirement for that person. The agency is not required to conduct an additional investigation in such circumstances, and the completed security clearance investigation restarts the 5-year schedule (or other schedule as future guidance might require) for a new public trust reinvestigation.

Assessments Resulting From Reinvestigations

The regulation at 5 CFR 731.106(f) would be modified to more clearly reflect the broader authority and obligation of agencies to make decisions following investigations. The current language provides that a completed investigation must result in a ''determination'' by the agency. As discussed below, an agency's decision on a reinvestigation of an employee in a public trust position will rarely be a *suitability* determination that results in a suitability action under this part. Thus, the potentially misleading word ''determination'' would be replaced with the word ''assessment.''

As currently provided at 5 CFR 731.106(f), a person's employment status will determine the applicable agency authority and procedures to be followed in any action taken based on the results of the reinvestigation. In most circumstances, the subject of a reinvestigation will have been employed by their agency for more than one year and, under those circumstances, only OPM could make a suitability determination and take a *suitability* action under very limited circumstances. As provided under 5 CFR 731.105(d), OPM could take a suitability action based on (1) a material, intentional false statement, or deception or fraud in examination or appointment; (2) refusal to furnish testimony; or (3) a statutory or

regulatory bar that prevents the lawful employment of the person. However, conduct that surfaces during a reinvestigation (for example, off-duty criminal conduct) could form the basis for an adverse action under 5 CFR part 752.

Consistent with the changes made to 5 CFR 731.106, the reporting requirements under 5 CFR 731.206 would be modified to require agencies to report any decisions and actions taken as a result of a background investigation or reinvestigation. Here, the ''level'' of investigation is replaced by the ''level or nature'' of the investigation as a reporting obligation, to be consistent with E.O. 13488. The actual information reported is unchanged. Section 731.206 of title 5, Code of Federal Regulations, also would be clarified to reflect current practice that agencies follow in reporting the completion dates of background investigations. This is important, since the public trust position reinvestigation schedule is tied to the completion date of a relevant investigation.

Technical Amendment

OPM proposes a technical amendment to the Authorities for this part to reflect the President's signing of Executive Order 13488 on January 16, 2009, which authorizes the Director of OPM to issue regulations and guidance implementing the order.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988—Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 731

Administrative practices and procedures, Government employees.

Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to amend part 731, title 5, Code of Federal Regulations, as follows:

PART 731—SUITABILITY

Subpart A—Scope

1. The authority citation for part 731 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 7301; E.O. 10577, E.O. 13467, E.O. 13488, 3 CFR, 1954–1958 Comp., p. 218, as amended, 5 CFR, parts 1, 2 and 5.

2. In § 731.106, revise paragraphs (d) and (f) to read as follows:

§ 731.106 Designation of public trust positions and investigative requirements.

* * * * *

(d) *Reinvestigation requirements.*

(1) Agencies must ensure that reinvestigations are conducted and an assessment made regarding continued employment of persons occupying public trust positions at least once every 5 years. The nature of these reinvestigations and any additional requirements concerning their frequency will be established in supplemental guidance issued by OPM.

(2) If, prior to the next required reinvestigation, a separate investigation (or reevaluation) is conducted to determine a person's eligibility (or continued eligibility) for access to classified information or as a result of a change in risk level as provided in § 731.106(e), and that investigation is conducted at an equal or higher level than is required for a public trust reinvestigation, a new reinvestigation is not required. Such a completed investigation restarts the cycle for a public trust reinvestigation for that person.

* * * * *

(f) *Completed investigations.* Any suitability investigation (or reinvestigation) completed by an agency under paragraphs (d) and (e) of this section must result in an assessment by the employing agency of whether the findings of the investigation would justify an action against the employee, under this part or under some other authority, such as 5 CFR 752. § 731.103 addresses whether an action is available under this part, and whether the matter must be referred to OPM for debarment consideration.

3. Revise § 731.206 to read as follows:

§ 731.206 Reporting requirements.

Agencies must report to OPM the level or nature, result, and completion date of each background investigation or reinvestigation, each agency decision based on such investigation or reinvestigation, and any personnel action taken based on such investigation or reinvestigation, as required in OPM issuances.

[FR Doc. E9–26448 Filed 11–2–09; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1025; Directorate Identifier 2009–CE–055–AD]

RIN 2120–AA64

Airworthiness Directives; Extra Flugzeugproduktions- und Vertriebs-GmbH Models EA–300/200 and EA–300/L Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct

an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> The manufacturer has advised that the combination of a redesigned tail spring support with a stiffer tail spring and rough field operations has led to cracks in the tail spring support mounting base. Cracks have also been reported on aeroplanes already compliant with Part II of Extra Service Bulletin No. SB–300–2–97 issue A, as mandated by the LBA AD D–1998–001, dated 15 January 1998.

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

DATES: We must receive comments on this proposed AD by December 18, 2009.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1025; Directorate Identifier 2009–CE–055–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency, which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2009–0160, July 21, 2009 (corrected on July 28, 2009) (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The manufacturer has advised that the combination of a redesigned tail spring support with a stiffer tail spring and rough field operations has led to cracks in the tail spring support mounting base. Cracks have also been reported on aeroplanes already compliant with Part II of Extra Service Bulletin No. SB–300–2–97 issue A, as mandated by the LBA AD D–1998–001, dated 15 January 1998.
>
> For the reasons stated above, this new AD mandates instructions for recurring inspections and modification in the area of the tail spring support in order to prevent separation of the tail landing gear which could result in serious damage to the airplane during landing.

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

Relevant Service Information

Extra Flugzeugproduktions- und Vertriebs-GmbH has issued EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 184 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $29,440, or $160 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $460, for a cost of $2,060 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Extra Flugzeugproduktions- und Vertriebs-GmbH: Docket No. FAA–2009–1025; Directorate Identifier 2009–CE–055–AD.

Comments Due Date

(a) We must receive comments by December 18, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following model and serial number airplanes, certificated in any category:

(1) Model EA–300/200 airplanes, serial numbers (S/N) 01 through 31, and 1032 through 1043; and

(2) Model EA–300/L airplanes, S/N 01 through 170, 172, 173, 1171, and 1174 through 1299.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

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

''The manufacturer has advised that the combination of a redesigned tail spring support with a stiffer tail spring and rough field operations has led to cracks in the tail spring support mounting base. Cracks have also been reported on aeroplanes already compliant with Part II of Extra Service Bulletin No. SB–300–2–97 issue A, as mandated by the LBA AD D–1998–001, dated 15 January 1998.

''For the reasons stated above, this new AD mandates instructions for recurring inspections and modification in the area of the tail spring support in order to prevent separation of the tail landing gear which could result in serious damage to the airplane during landing.''

Actions and Compliance

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

(1) Before further flight after the effective date of this AD and repetitively thereafter at intervals not to exceed 50 hours time-in-service, inspect the tail spring support for cracks in accordance with PART I of Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009.

(2) If any crack is found as a result of the inspections required by paragraph (f)(1) of this AD, before further flight, modify the tail spring support structure as instructed in PART II of Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009. Modification of the tail spring support structure terminates the repetitive inspections required in paragraph (f)(1) of this AD.

(3) You may at any time modify the tail spring support structure as instructed in PART II of Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009, to terminate the repetitive inspections required in paragraph (f)(1) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2009–0160, July 21, 2009 (corrected on July 28, 2009); and Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009, for related information.

Issued in Kansas City, Missouri, on October 28, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26391 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL MEDIATION BOARD

29 CFR Parts 1202 and 1206

[Docket No. C–6964]

RIN 3140–ZA00

Representation Election Procedure

AGENCY: National Mediation Board.

ACTION: Proposed rule with request for comments.

SUMMARY: As part of its ongoing efforts to further the statutory goals of the Railway Labor Act, the National Mediation Board (NMB or Board) is proposing to amend its Railway Labor Act rules to provide that, in representation disputes, a majority of valid ballots cast will determine the craft or class representative. The NMB believes that this change to its election procedures will provide a more reliable measure/indicator of employee sentiment in representation disputes and provide employees with clear choices in representation matters.

DATES: NMB must receive comments on or before January 4, 2010.

ADDRESSES: You may submit comments identified by Docket Number C–6964 by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Agency Web Site: http://www.nmb.gov.* Follow the instructions for submitting comments.

• *E-mail: legal@nmb.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 692–5085.

• *Mail and Hand Delivery:* National Mediation Board, 1301 K Street, NW., Ste. 250E, Washington, DC 20005.

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.nmb.gov,* including any personal information provided.

Docket: For access to the docket or to read background documents or comments received, go to *http://www.nmb.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *infoline@nmb.gov.*

SUPPLEMENTARY INFORMATION: Under Section 2, Ninth of the Railway Labor Act (RLA or Act), 45 U.S.C. 152, Ninth, it is the NMB's duty to investigate representation disputes ''among a carrier's employees as to who are the representatives of such employees * * * and to certify to both parties, in writing * * * the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier.'' Upon receipt of the Board's certification, the carrier is obligated to treat with the certified organization as the employee's bargaining representative.

The RLA authorizes the Board to hold a secret ballot election or employ ''any other appropriate method'' to ascertain the identities of duly designated employee representatives. 42 U.S.C. 152, Ninth. As the Supreme Court has noted, ''not only does the statute fail to spell out the form of any ballot that might be used but it does not even require selection by ballot. It leaves the details to the broad discretion of the Board with only the caveat that it 'insure' freedom from carrier interference.'' *Bhd. of Ry. and S.S. Clerks* v. *Assn. for the Benefit of Non-Contract Employees,* 380 U.S. 650, 668–669 (1965).

The Board's current policy requires that a majority of eligible voters in the craft or class must cast valid ballots in favor of representation. This policy is based on the Board's original construction of Section 2, Fourth of the RLA, which provides that, ''[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class * * *.'' 45 U.S.C. 152, Fourth. This ''interpretation was made, however, not on the basis of legal opinion and precedents, but on what seemed to the Board best from an administration point of view.'' 1 NMB Ann. Rep. 19 (1942).

The Board has since maintained that policy, but believes that under its broad statutory authority, it may also reasonably interpret Section 2, Fourth to allow the Board to certify as collective bargaining representative any organization which receives a majority of votes cast in an election. In *Virginian Railways Co.* v. *Sys. Fed'n,* 300 U.S. 515, 560 (1937), the Court stated that the words of Section 2, Fourth, ''confer the right of determination upon a majority of those eligible to vote, but is silent as to the manner in which that right shall be exercised.'' Congress left it to the Board to determine the manner in an exercise of its discretion and, as Attorney General Tom C. Clark noted in his 1947 opinion on this issue:

> Under Section 2, Fourth, of the Railway Labor Act, the National Mediation Board has the power to certify as collective bargaining representative any organization which receives a majority of votes cast at an election despite the fact that less than a majority of those eligible to vote participated in the election.

Majority Vote under the Railway Labor Act, 40 Op. Att'y Gen. 541 (1947). In reaching this conclusion, the Attorney General cited not only the plain language of the Act and the Court's decision in *Virginian Railways,* but also the legislative history of Section 2, Fourth. The report of the Senate Committee on Interstate Commerce stated specifically that this section provides ''that the choice of representative of any craft shall be determined by a majority of the employees voting on the question.'' *Id.* at 542 (*quoting* Sen. Rep. 1065, 73d Cong. 2d Sess., p. 2). The Attorney General noted that the language of Section 2, Fourth appears to have been taken from a rule of the United States Railroad Board (Railroad Board) acting under the labor provisions of the Transportation Act of 1920 and that the Railroad Board had held that a majority of ballots cast in an election were sufficient to designate a representative. *Id.* at 541 n. 1. The Attorney General further noted the similarity between the language of Section 2, Fourth and Section 9(a) of the National Labor Relations Act (NLRA), 29 U.S.C. 159(a), which provides that, ''[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *.'' Under the NLRA, collective bargaining representatives are certified on the basis of the majority of ballots cast. The Attorney General also cited the statement in the House Committee report on the bill that became the NLRA that ''the bill is merely an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by Section 7(a) of the National Industrial Recovery Act, with the addition of enforcement machinery of familiar pattern.'' 40 Op. Att'y Gen. at 543 n.3 (quoting H. Rep. 1147, 74th Cong., 1st Sess., p. 3).

Finally, Attorney General Clark further observed the following:

> [W]hen the Congress desires that an election shall be determined by a majority of those eligible to vote rather than by a majority of those voting, the Congress knows well how to phrase such a requirement. For example, in Section 8(a)(3)(ii) of the National Labor Relations Act, as amended by the Labor Management Relations Act, the Congress has required that before any union shop agreement may be entered into, the National Labor Relations Board must certify 'that at least a *majority of the employees eligible* to vote in such election have voted to authorize such labor organization to make such an agreement.'

Id. at 544. (emphasis in original).

Since 1935, the Board has reexamined its policy of certifying a representative based on a majority of eligible voters on several occasions, most recently in 2008. *Delta Air Lines, Inc.,* 35 NMB 129 (2008). In each instance, the Board relied on an assertion that the current election policy, which as noted above was adopted for administrative rather than legal or factual reasons, maintains stable labor relations and fulfills the obligations under Section 2, Ninth. With regard to the stability in labor relations under the RLA, the Board believes that this stability which is often associated with the low incidence of strikes is more directly related to the Board's mediation function than to its representation function. The Board exercises a unique power under the RLA: The ability to determine the duration of mediation and thus the timing of a release from mediation and the potential opportunity for either side to engage in self-help. Because of the mandatory nature of the mediation process under the RLA, the parties are pressured to compromise their positions even though each may believe that its

original position was reasonable. The Supreme Court has recognized that the Board's mediation process is designed to be ''almost interminable'' so that the parties are moved to compromise and settlement without strikes or other economic disruptions. *Detroit & Toledo Shore Line R. R.* v. *United Transp. Union,* 396 U.S. 142, 149 (1969).

With regard to its obligations under Section 2, Ninth, the Board notes that its current construction of Section 2, Fourth was adopted in a much earlier era, under circumstances that differ markedly from those prevailing today. During the 1920s and 1930s widespread company unionism undermined collective bargaining and incited labor unrest. *See Pennsylvania R.R.* v. *Railroad Labor Bd.,* 261 U.S. 72 (1923).[1] Between 1933 and 1935 some 550 company unions on 77 Class I railroads were replaced by national unions. Benjamin Aaron, et al., *The Railway Labor Act at Fifty: Collective Bargaining in the Railroad and Airline Industries,* 26 (Charles M. Rhemus ed., 1977) (citing Leonard A. Lecht, *Experience Under Railway Labor Legislation* 155 (New York 1955)). Labor relations in the air and rail industries have progressed since the early days of the RLA but many of the Board's election procedures have not.

Under the existing election procedure, there is no opportunity for an employee to vote ''no'' or cast a ballot against representation. Abstaining from voting, for whatever reason, is counted by the Board as a vote against representation. Thus, under current election procedures, the Board determines that the failure or refusal of an eligible voter to participate in an NMB-conducted election is the functional equivalent of a ''no union'' vote. In these instances, the Board's current election procedure appears to be at odds with the modern participatory workplace philosophy that has evolved in the air and rail industries and the basic principles of democratic elections. Air and rail labor and management now go to great lengths to encourage employee participation in workplace matters. *See, e.g., Bucking Trend, Airline Keeps Repairs In-House,* NPR, All Things Considered, October 20, 2009, *http://www.npr.org/templates/transcript/transcript.php?storyid=113971588; A New Approach for Airlines,* Wall St. J., May 12, 2008, at R3. *http://online.wsj.com/article/SB121026578961977661.html;* The Proposed Delta/Northwest Airlines Merger: The Impact on Workers: Hearing Before the House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions (testimony of Robert Kight, Vice President, Compensation and Benefits Delta Air Lines) 110th Cong. 5–6 (2008). *http://republicans.edlabor.house.gov/Media/File/Hearings/help/73008/Kight.pdf.*

The proposed change, if adopted, should bring the Board's election process in line with industry developments and discourage employee non-participation by giving every employee a chance to affirmatively express their preference for or against representation.

Further, to the Board's knowledge, few if any democratic elections are conducted in this manner. In our society, free choice is expressed on the basis of a majority of valid votes cast in an election. In *Virginian Railway,* the Court stated that, ''[e]lection laws providing for approval of a proposal by a specified majority of an electorate have been generally construed as requiring only the consent of the specified majority of those participating in the election. Those who do not participate 'are presumed to assent to the expressed will of the majority of those voting.' '' 300 U.S. at 560 (internal citations omitted).

There are many reasons individuals do not vote in elections. Nonvoting can be a conscious choice and assigning those who choose not to vote a role in determining the outcome of an election is a type of compulsory voting, not practiced in our democratic system. A system of compulsory voting or assigning a position to those who choose not to vote denies individuals the right to abstain from participating in an election, a right available in other democratic elections in this country. In political elections, those who do not vote acquiesce to the will of those who choose to participate. To allow a contrary policy could allow those lacking the interest or will to vote to supersede the wishes of those who do take the time and trouble to cast ballots.

The Board's primary duty in representation disputes is to determine the clear, un-coerced choice of the affected employees and the Board believes that this duty can be better fulfilled by modifying its election procedures to rely on the choice of the majority of valid ballots cast in the election. This process will ensure that each employee vote, whether for or against representation, will be regarded with equal weight. The Board will no longer substitute its opinion for that of the employee and register the lack of a vote as a ''no'' vote.

If the proposed regulatory change is adopted, the Board will specify that in secret ballot elections conducted by the Board, the craft or class representative will be determined by a majority of valid ballots cast. The proposed change will also provide employees with an opportunity to vote ''no'' or against union representation.

The Board's proposed change will not affect the showing of interest requirements as set forth in 29 CFR 1206.2. For the sake of clarity, 29 CFR 1202.4 as revised is cited in full.

Chairman Dougherty dissented from the action of the Board majority in approving this proposed rule. Her reasons for dissenting are set forth below.

I dissent from the proposed rulemaking for several reasons. Our current election rules have a long history and are supported by important policy reasons. I do not believe there is any evidence or legal analysis currently before the Board to support making the change proposed by my colleagues. Serious questions exist about the Board's statutory authority to make the rule change and its ability to articulate a rationale for change that complies with the Administrative Procedure Act (APA). Perhaps most importantly, the proposed rule makes no reference to other requests the Board has received to consider decertification and *Excelsior* list issues. For these and the following reasons, I believe it is, at a minimum, premature to propose a rule change of this magnitude, and a more prudent course of action would be for the Board not to prejudge this issue, but rather to give all interested parties an opportunity to comment on the request made by the Transportation Trades Division of the AFL–CIO (TTD), together with subsequent requests regarding

[1] This case involved the refusal by the Pennsylvania Railroad to confer with the trade union which represented a majority of its employees and instead proceeded to deal with a company union which it had fostered and recognized as the workers' representatives. The Board's precursor, the Railway Labor Board, ordered a new election to determine the workers' choice of representative and the Railroad refused to comply with this order. The Union sought an injunction to keep the Railroad from enforcing its agreements with the company union, but the injunction was denied. The Court upheld the denial on the ground that the labor provisions of the Transportation Act expressed only Congress' recommendations regarding collective bargaining rights of railway employees. The RLA was enacted following widespread dissatisfaction with the Transportation Act and the lack of prohibitions on employer control of employees' organization. *Effect of the Railway Labor Act of 1926 Upon Company Unions,* 42 Harv. L. Rev. 108 (1928). The need for complete freedom from carrier involvement in employees' selection of a collective bargaining representative is expressed in the General Purposes Clause of the RLA which states that one of the purposes of the Act is ''to provide for the complete independence of carriers and of employees in the matter of self organization.'' 45 U.S.C 151a.

decertification and other issues, before making any proposals.

The rule in question has been applied consistently for 75 years—including by Boards appointed by Presidents Roosevelt, Truman, Johnson, Carter, and Clinton. Making this change would be an unprecedented event in the history of the NMB, which has always followed a policy of making major rule changes with consensus and only when required by statutory amendments or essential to reduce administrative burdens on the agency. *Chamber of Commerce of the United States,* 14 NMB 347, 356 (1987). Regardless of the composition of the Board or the inhabitant of the White House, this independent agency has never been in the business of making controversial, one-sided rule changes at the behest of only labor or management.

No one, including my colleagues, has suggested that the Railway Labor Act (RLA) mandates the change in the proposed rule or that the rule change is necessary to reduce administrative burdens on the Agency. In fact, a serious question exists as to whether the NMB even has the statutory authority to make this reversal. A Board appointed by President Carter unanimously decided that the Board is of the view that it does not have the authority to administratively change the form of the ballot used in representation disputes and that such a change, if appropriate, should be made by Congress.[2]

I also believe that my colleagues have not articulated a rationale for this rule change as required by the APA. With this notice of proposed rulemaking, my colleagues seek to radically depart from long-standing, consistently applied administrative practices. Under the APA, a change in such a long-standing policy must be supported by a strong rationale. While administrative agencies are not bound by prior policy, there is a duty to explain adequately ''departures from agency norms.'' *Pre-Fab Transit Co.* v. *Interstate Commerce Comm'n*, 595 F.2d 384, 387 (7th Cir. 1979). A change in the majority voting rule must be based on more than the preferences of the current Board. ''An agency's view of what is in the public interest may change either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis * * * [I]f it wishes to depart from its prior policies, it must explain the reasons for its departure.'' *Panhandle E. Pipeline Co.* v. *Fed. Energy Regulatory Comm'n*, 196 F.3d 1273, 1275 (D.C. Cir. 1999) (internal citations omitted). ''Conclusory statements'' and ''conjecture cannot substitute for a reasoned explanation'' for such a change in precedent. *Graphic Comm. Int'l Union* v. *Salem-Gravure Div. of World Color Press, Inc.*, 843 F.2d 1490, 1494 (DC Cir.)

There is nothing in the proposed rule to support changing this long-standing Board tradition. The Board has repeatedly articulated important policy reasons for our current majority voting rule—including our duty to maintain stability in the air and rail industries. 16 NMB Ann. Rep. 20 (1950); *Chamber of Commerce of the United States*, 14 NMB 347, 362 (1987). This duty stems directly from our statutory mandate to ''avoid interruption to commerce or the operation of any rail or air carrier.'' *Id.* The Majority attempts to ignore this important statutory mandate by claiming that only our mediation function is relevant to keeping stability in the air and rail industries. This argument has no merit. The statute does not limit our mandate to only mediation, and it is disingenuous to suggest that our representation function does not play an important role in carrying out our duty to maintain stability in these industries. Moreover, the Board has repeatedly in the past raised this policy issue in conjunction with our representation function. 16 NMB Ann. Rep. 20 (1950); *Chamber of Commerce of the United States*, 14 NMB 347, 362 (1987). As the Board stated in 1987, ''[a] union without majority support cannot be as effective in negotiations as a union selected by a process which assures that a majority of employees desire representation.'' *Chamber of Commerce of the United States*, 14 NMB 347, 362 (1987). Assuring that a representative certified by the NMB enjoys true majority support is even more important given that union certifications under the RLA must cover an entire transportation system[3]—often over enormously wide geographic areas with large numbers of people. I also note that there is no process for decertifying a union under the RLA. These unique aspects of the RLA do not exist under the National Labor Relations Act or elsewhere, and they render irrelevant comparisons between the RLA and other election procedures.[4]

The only other rationale offered by my colleagues is changed circumstances and an increasingly participatory workforce. I fail to see how these changes, if true, support changing a 75-year-old practice based on important statutory mandates that have not changed. Moreover, any argument that changed labor relations support changing our election practices are definitively rebutted by the facts: The percentage of rail and air employees who are union members is dramatically higher than in other industries, and the percentage of air and rail employees participating in elections has increased by almost 20% over the last decade.

The Majority has not articulated a sufficient rationale for making the change. Moreover, the request from the Transportation Trades Division of the AFL–CIO (TTD) that prompted this rule change was made in an informal, two-page letter with no legal analysis, no mention of changed conditions, and no discussion of our statutory authority. In light of these facts, the Board's history, and the lack of support for the change, I don't see how the Board could propose a rule change this controversial and divisive without the benefit of a full briefing from all interested parties.

I also dissent because I am concerned about the timing of the Majority's proposal. The Board recently established a bi-partisan, labor-management committee (which we are calling Dunlop II) to examine the RLA and the NMB and recommend changes. The committee has not yet delivered its report. In my view, it would be premature and irresponsible for the Board to propose any change to one of its most long-standing procedures before this committee has made its report.

Moreover, the Board has received requests to begin representation proceedings involving close to 40,000 employees at two major airlines—the largest group of elections in the history of the NMB. I believe it is harmful to the reputation and credibility of the Board for it to take a position in favor of a change to our election rules during these elections, which the Majority does by proposing this change. As I have previously stated, I believe the more impartial and responsible approach

[2] In addition, the only court ever to rule specifically on the question of whether the Board has the authority to certify a representative where less than a majority of the eligible voters participates in an election found that it did not. *Virginian Railways Co.* v. *Sys. Fed'n,* 11 F. Supp. 621, 625 (E.D. Va 1935). That ruling was not appealed and no court has ever specifically held that the Board has this authority.

[3] It is well settled that the Board applies the term ''craft or class'' under the RLA on a system-wide basis. *Delta Air Lines Global Servs.*, 28 NMB 456, 460 (2001); *American Eagle Airlines*, 28 NMB 371, 381 (2001); *American Airlines*, 19 NMB 113, 126 (1991); *America West Airlines, Inc.*, 16 NMB 135, 141 (1989); *Houston Belt & Terminal Railway*, 2 NMB 226 (1952).

[4] As the Supreme Court has long recognized, ''that the National Labor Relations Act cannot be imported wholesale into the railway labor arena. Even rough analogies must be drawn circumspectly, with due regard for the many differences between the statutory schemes.'' *Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 US 369, 383 (1969).

would be to seek comment on the TTD's request, together with other related issues, so that we could have the benefit of a full briefing on all the issues before making proposals in favor of the change.

I also dissent because the Majority's proposed rule does not request comment on several related issues that have been raised by our constituents in connection with the TTD's request. I believe firmly that the Board should not consider the TTD petition in a vacuum. Several parties have requested that we consider a decertification procedure, noting that a minority voting rule necessitates some sort of decertification mechanism or else it deprives employees of the right to be unrepresented. We have also received a request to consider providing *Excelsior* lists to unions. And there are also other areas of our representation policy and procedures that would be implicated by a change in voting rules. For example, we currently require a union seeking to challenge an incumbent union to submit authorization cards from more than 50% of eligible voters. If we were to change our voting rules to permit fewer than 50% of eligible voters to select a representative, we must contemporaneously consider whether we should still require a greater than 50% showing of authorization cards to challenge an incumbent union. In order to be fair to all interested parties, I believe that Board must consider all of these issues together, and I am surprised that my colleagues have ignored these other requests and are addressing only the TDD's request. I believe the Board should have requested comment on all relevant issues before making any proposals and I encourage interested parties to submit comments addressing these other issues.

Chairman Elizabeth Dougherty.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The NMB certifies that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

This proposal will not have any significant impact on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

List of Subjects in 29 CFR Parts 1202 and 1206

Air carriers, Labor management relations, Labor unions, Railroads.

Accordingly, as set forth in the preamble, the NMB proposes to amend 29 CFR chapter X as follows:

PART 1202—RULES OF PROCEDURE

1. The authority citation for 29 CFR Part 1202 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

2. Section 1202.4 is revised to read as follows:

§ 1202.4 Secret ballot.

In conducting such investigation, the Board is authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. Except in unusual or extraordinary circumstances, in a secret ballot the Board shall determine the choice of representative based on the majority of valid ballots cast.

PART 1206—HANDLING REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT

3. The authority citation for 29 CFR Part 1206 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

§ 1206.4 [Amended]

4. Amend § 1206.4(b)(1) by removing the phrase ''less than a majority of eligible voters participated in the election'' and by adding in its place the phrase ''less than a majority of valid ballots cast were for representation.''

Dated: October 28, 2009.

Mary Johnson,

General Counsel, National Mediation Board.

[FR Doc. E9–26437 Filed 11–2–09; 8:45 am]

BILLING CODE 7550–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0780; FRL–8976–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Existing Regulation Provisions Concerning Case-by-Case Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision consists of amendments to the Commonwealth's existing regulations in order to clarify and recodify provisions covering case-by-case reasonably available control technology (RACT), as well as to add the 1997 8-hour ozone standard RACT requirements to the Commonwealth's regulations. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 3, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0780 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0780, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0780. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 8, 2008, the Commonwealth of Virginia submitted a regulation revision for case-by-case RACT determinations, which consists of amendments to the existing regulations in order to implement the non-control techniques guidelines RACT specific 8-hour ozone nonattainment area requirements of subpart X of 40 CFR Part 51, and to restructure and recodify the regulations for clarity. In addition to clarifying and recodifying the existing provisions covering case-by-case RACT determinations, the regulation amendments create a new Rule 4–51 (Article 51 of 9 VAC 5 Chapter 40)—Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations, in order to separate the RACT specific requirements from the general process requirements of Article 4 of 9 VAC 5 Chapter 40. These amendments consisted only of changes in style or form.

The regulation amendments also add the 1997 8-hour ozone standard requirements set forth by the CAA. Subpart X of 40 CFR Part 51 specifically defines the provisions for implementation of the 8-hour ozone national ambient air quality standard (NAAQS). The rule specifies dates by when states must submit their RACT SIPs, and when RACT must be implemented. The rule also requires that nonattainment areas meet the requirements of 40 CFR 51.900(f), which includes RACT and major source applicability cut-offs for purposes of RACT.

II. Summary of SIP Revision

Further details of the Commonwealth of Virginia's regulation revisions can be found in a Technical Support Document prepared for this rulemaking. This SIP revision consists of the following changes:

1. Addition of Rule 4–51—Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations, in order to separate the RACT specific requirements from the general process requirements of Article 4 of 9 VAC 5 Chapter 40.
2. Administrative wording changes to regulations 9 VAC 5–40–250A. and 9 VAC 5–40–250B.
3. Deletion of definition of ''Reasonably available control technology'' in 9 VAC 5–40–250C. and addition of the definition to 9 VAC 5–40–7380 in Article 51 of 9 VAC 5 Chapter 40.
4. Addition of the following definitions to regulation 9 VAC 5–40–7380C.—Terms defined: ''Presumptive RACT,'' ''Theoretical potential to emit'' and ''Tpy.''
5. All the definitions in regulation 9 VAC 5–40–311B.3—Terms defined, were deleted and added to 9 VAC 5–40–7380C. in Article 51 of 9 VAC 5 Chapter 40.
6. Repealed regulations 9 VAC 5–40–300—Standard for volatile organic compounds, 9 VAC 5–40–310—Standard for nitrogen oxides, and 9 VAC 5–40–311—Reasonably available control technology guidelines for stationary sources of nitrogen oxides, in Article 4 of 9 VAC 5 Chapter 40 and replaced them with 9 VAC 5–40–7390—Standard for volatile organic compounds (one-hour standard), 9 VAC 5–40–7410—Standard for nitrogen oxides (one-hour ozone standard), and 9 VAC 5–40–7430—Presumptive reasonably available control technology guidelines for stationary sources of nitrogen oxides, respectively, in Article 51 of 9 VAC 5 Chapter 40.
7. Addition of the 1997 8-hour ozone standard requirements for RACT in regulations 9 VAC 5–40–7400—Standard for volatile organic compounds (eight-hour ozone standard) and 9 VAC 5–40–7420—Standard for nitrogen oxides (eight-hour ozone standard).

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or

approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision that clarifies and recodifies provisions covering case-by-case RACT, as well as adds the 1997 8-hour ozone standard requirements to the Commonwealth's regulations. EPA views the administrative changes and re-codifications as non-substantive, as they do not affect the scope of the currently approved Virginia SIP, and consequently, cannot interfere with timely attainment or progress towards attainment of a NAAQS, nor interfere with any other provision of the CAA. However, regulation 9 VAC 5–40–7420F. and G. incorrectly cross-references the Commonwealth's VOC regulations at 9 VAC 5–40–7390, instead of its nitrogen oxides regulation at 9 VAC 5–40–7410. The Commonwealth is in the process of correcting the cross-references in this regulation and will submit the correction to EPA. EPA does not intend to finalize this action until after the Commonwealth formally submits the corrected versions of 9 VAC 5–40–7420F. and G. to EPA as part of this SIP revision. EPA does not intend to reopen the comment period before taking final action on this SIP revision. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 22, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–26340 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Termination of proposed rulemaking.

SUMMARY: The Commission has determined to terminate the Proposed Rulemaking published on October 31, 2002, in FMC Docket No. 02–15. The Proposed Rule would have amended the Commission's passenger vessel regulations at 46 CFR Part 540, which implement the statutory requirement to provide proof of passenger vessel financial responsibility.

ADDRESSES: Address all comments and inquiries concerning this termination to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North

Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Peter J. King, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001, (202) 523–5740, E-mail: *generalcounsel@fmc.gov*.

SUPPLEMENTARY INFORMATION:

By Notice of Proposed Rulemaking published October 31, 2002, 67 FR 66352, the Commission proposed amendments to its passenger vessel regulations at 46 CFR Part 540. These regulations implement the statutory requirement to provide proof of passenger vessel financial responsibility under Sections 2 and 3 of Public Law 89–777, now recodified at 46 U.S.C. 44101–44103. The proposed amendments would have: eliminated the current ceiling on required performance coverage; adjusted the amount of coverage required by providing for consideration of the obligations of credit card issuers; provided for the use of Alternative Dispute Resolution (ADR), including the Commission's ADR program, in resolving passenger performance claims; revised the application form, and made other technical changes. By reason of the scope of the changes proposed, the Commission sought to revise and republish in their entirety the Commission's passenger vessel operator (PVO) rules at 46 CFR Part 540.

The Commission's proposed rule elicited a broad range of comments from many sectors of the cruise industry. Comments were received from cruise lines, travel agents, individual ports servicing the cruise industry, state ports councils; and from the surety industry, banking industry and the credit card companies as well as trade associations representing these sectors of the industry. Comments were submitted both to the Commission and also to the Office of Management and Budget. In recognition of broad public interest in the rulemaking, the Commission initially extended the comment period for receiving written submissions and ultimately convened a public hearing to accept oral comments. Comments and status updates continued to be received by the Commission through April 2004.

Written and oral comments revealed wide-spread differences of opinion on both questions of fact and law with respect to the proposed rule, with particular aspects supported (or opposed) by one trade sector or another. More than 5 years have now passed since the Commission last received comments on the proposed rule. The record in this proceeding has effectively become stale, failing to account for changes in the industry that include, but are not limited to, the recent economic downturn that has greatly impacted most segments of the domestic and world economies. The Commission has determined that the record amassed in prior years is no longer legally sufficient to sustain contemporary efforts to either adopt or propose new alternatives to the Commission's financial responsibility requirements for PVOs.

For these reasons, the Commission has decided to terminate the Notice of Proposed Rulemaking published on October 31, 2002, 67 FR 66352. Should the Commission decide to move forward with revising its passenger vessel regulations, the industry will be provided further opportunity to submit comments.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–26402 Filed 11–2–09; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R7-ES-2009-0049]
[MO 9221050083-B2]

[RIN 1018-AW32]

Endangered and Threatened Wildlife and Plants; Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the British Columbia distinct population segment (DPS) of the Queen Charlotte goshawk (*Accipiter gentilis laingi*) as threatened, except on the Queen Charlotte Islands (a significant portion of the DPS's range), where we propose to list the goshawk as endangered, under the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protection to this subspecies in British Columbia, Canada, on Vancouver Island and the surrounding smaller islands, the Queen Charlotte Islands, and the coastal mainland west of the Coast Mountains. The Service seeks data and comments from the public on this proposal.

DATES: We will consider comments received on or before January 4, 2010. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 18, 2009.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R7-ES-2009-0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Brockmann, Juneau Fish and Wildlife Field Office, 3000 Vintage Blvd. Suite 201, Juneau, AK 99801; telephone (907) 780-1181; fax (907) 586-7154.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or suggestions from other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments regarding:

(1) Biological information, population status, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies,

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The appropriate conservation status for the British Columbia DPS of the Queen Charlotte goshawk, and

(4) Specific information on the areas identified as significant portions of the

range in this proposed rule, including threats.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, 3000 Vintage Blvd, Suite 201, Juneau, AK 99801.

Final promulgation of the regulations concerning the listing of this subspecies will take into consideration all comments and additional information that we receive, and may lead to a final regulation that differs from this proposal.

Queen Charlotte Goshawk Biology

The Queen Charlotte goshawk is a comparatively small, dark subspecies of northern goshawk (*Accipiter gentilis*) that nests and forages in the temperate, rainforest-dominated archipelagos and coastal mainland of southeast Alaska and British Columbia. Natural history and threats to the subspecies are described in detail in our status review (USFWS 2007; USFWS 2008) and evaluated in our most recent finding, published in the **Federal Register** on November 8, 2007 (72 FR 63123). Below, we briefly summarize key aspects of the Queen Charlotte goshawk's biology.

Goshawks typically nest and forage in old-growth forest, but use mature second-growth (previously harvested, regenerating stands that have developed adequate structure) where old-growth forest is limited (Titus *et al.* 1994, pp. 19-24; Iverson *et al.* 1996, pp. 27-40; McClaren and Pendergast 2003, pp. 4-6). Non-forested land, recently clear-cut areas, and young second-growth stands are avoided (Iverson *et al.* 1996, pp. 27-40).

Forest regeneration following timber harvest usually results in dense second-growth stands that may support populations of some prey species, but goshawks avoid these habitats, presumably because they are too dense for the hawks to effectively hunt (DeStefano and McCloskey 1997, p. 38; Beier and Drennan 1997, p. 570; Greenwald *et al.* 2005, pp. 125-126; USFWS 2007, pp. 62-67).

As second-growth stands approach economic maturity, the forest structure develops adequately to allow goshawks to forage below the canopy. Second growth reaches economic maturity when its growth rate begins to slow. Trees of this age typically have not reached maximum size. Canopies of these stands are usually uniformly dense unless the stand was harvested in a multi-age system or has been thinned. We refer to such stands as ''mature'', or ''mature second growth.'' In this document, ''young second growth'' refers to second growth that has not yet reached maturity. Mature forest with structure suitable for goshawk nesting and foraging may develop as early as 45 to 50 years following harvest on the most productive sites in the southern portion of the Queen Charlotte goshawk's range (Doyle 2004, pp. 27-28; McClaren 2003, p. 19), but may take over 100 years on less productive sites (Iverson *et al.* 1996, p. 71). These stands are typically harvested within a decade or two of reaching economic maturity, if they are in an area currently open to logging. On lands managed for sustained-yield timber harvest, approximately 10 to 20 percent of the second growth is typically mature and suitable as goshawk habitat, although this percentage varies with harvest history, stand treatments, and current demand for timber (Daniel *et al.* 1979, pp. 304-344). Unharvested retention areas (e.g., stream buffers) provide old-growth habitat in addition to any mature second growth in harvested landscapes.

''Old growth'' or ''old forest'' refers to a structural stage of forest characterized by several age classes of trees, including dominant trees that have reached the maximum size typical for the site, accumulations of dead, dying, and decaying trees and logs, and younger trees growing in gaps between the dominant trees. Such stands are typically over 250 years old within the range of the Queen Charlotte goshawk, and have not been previously harvested.

Goshawks hunt primarily by flying between perches and launching attacks from those perches. They take a variety of medium-sized prey, depending largely on local availability (Squires and Reynolds 1997, p. 1), which varies markedly among the islands in the Queen Charlotte goshawk's range. Red squirrels (*Tamiasciurus hudsonicus*) and sooty grouse (*Dendragopus fuliginosis*) (formerly blue grouse, *D. obscurus*) form the bulk of the diet in many locations, with thrushes, jays, crows, ptarmigan, and woodpeckers frequently taken as well (Ethier 1999, pp. 21-22 and 32-47; Lewis 2001, pp. 81-107; Lewis *et al.* 2004, pp. 378-382; Doyle 2005, pp. 30-31). During winter, many avian prey species migrate from the region, reducing the variety and abundance of prey available (Ethier 1999, p. 22; MacDonald and Cook 1999, pp. 23-24; Nagorsen 2002, pp. 92-97; Doyle 2005, p. 31). Winter diets of the Queen Charlotte goshawk are largely unknown.

Prey availability is defined by prey abundance and suitability of habitat for successful hunting. Commercial logging can reduce both. Mature and old-growth forest habitat provides productive habitat for prey species in a setting where goshawks can effectively hunt. Timber harvest typically results in prey population declines because few potential prey species within the range of the Queen Charlotte goshawk are adapted to open and edge habitats (Iverson *et al.* 1996, pp. 59-61; Doyle and Mahon 2003, p. 39; USFWS 2007, pp. 42-45). Where those logged areas grow into dense second-growth stands, hunting is impaired because these stands do not offer adequate flight space (DeStefano and McCloskey 1997, p. 38; Beier and Drennan 1997, p. 570; Greenwald *et al.* 2005, pp. 125-126; USFWS 2007, pp. 62-67).

Queen Charlotte goshawk nests are typically located in large trees within mature or old-growth forest stands that have greater volume and canopy cover than the surrounding forest (Iverson *et al.* 1996, pp. 47-56; Flatten *et al.* 2002, pp. 2-3; McClaren 2003, p. 12; McClaren and Pendergast 2003, pp. 4-6; Doyle 2005, pp. 12-14; USFWS 2007, pp. 26-30). Nesting pairs appear to be territorial, with nests spaced somewhat uniformly across available habitat. Nesting density, as measured by mean distance between adjacent nesting areas, appears to vary with habitat quality (primarily prey availability). Queen Charlotte goshawks appear to nest at lower densities than northern goshawks studied elsewhere (McClaren 2003, pp.13 and 21; Doyle 2005, p. 15; USFWS 2007, pp. 45-47).

The best available information suggests that viable nesting territories (which are approximately 24,700 acres (10,000 hectares) each) contain at least 40 percent mature and old-growth forest (Doyle 2005, p. 14; USFWS 2007, pp.

75-78). However, goshawks may nest in areas with lower proportions of mature and old-growth forest where prey adapted to more open habitats is abundant (Doyle 2006, pp. 135-140; Iverson *et al.* 1996, p. 55; USFWS 2007, p. 36).

Individual nests are frequently not used in subsequent years as pairs often move to an alternate nest. Most alternate nests are clustered within a few hundred acres (200 to 500 hectares) (McClaren 2003, p. 13; Flatten *et al.* 2001, pp. 9-11), although females have been documented leaving the nesting area altogether and nesting in subsequent years with a new mate in a different territory up to 95 miles (152 kilometers) away. Males have been documented moving up to 2 miles (3.2 kilometers) between subsequent nests, but apparently remain in their nesting area in subsequent years (Flatten *et al.* 2001, pp. 9-10).

Nest occupancy (percentage of nest areas with adult goshawks present) and nesting activity (percentage of nest areas with eggs laid) appear to vary with habitat suitability, prey availability, and weather, with greater occupancy or activity in areas with less fragmented forest habitat and in years with higher prey abundance and warmer, drier weather (Desimone and DeStefano 2005, pp. 317-318; Doyle and Smith 1994, p. 126; Ethier 1999, pp. 31 and 36; Fairhurst and Bechard 2005, pp. 231-232; Finn *et al.* 1998, p. 1; Finn *et al.* 2002, pp. 270-271; McClaren 2003, pp. 11 and 16; Patla 1997, pp. 34-35; Patla 2005, pp. 328-330; McClaren *et al.* 2002, p. 350; Salafsky *et al.* 2005, pp. 242-244).

When prey availability and weather are suitable and nesting is initiated, nest success (percent of active nests that fledge at least one young) is typically high (87 percent rangewide, 1991 to 2004), as is productivity (1.6 to 2.0 fledglings per active nest) (USFWS 2007, p. 54). Fledglings typically spend about 6 weeks within several hundred yards (several hundred meters) of their nests learning flight and hunting skills before dispersing (McClaren *et al.* 2005, p. 257). Retention of mature forest structure near the nest is believed to be important for supporting this developmental stage (Reynolds *et al.* 1992, pp. 15-16; Kennedy *et al.* 1994, p. 80; Ethier 1999, p. 31; Finn *et al.* 2002, pp. 270-271; McClaren 2003, pp. 11 and 16; Desimone and DeStefano 2005, pp. 317-318; McClaren *et al.* 2005, pp. 260-261; Patla 2005, pp. 328-330).

Range

In our previous status reviews and findings, we identified the range of the Queen Charlotte goshawk as the islands and mainland of southeast Alaska, and the Queen Charlotte Islands and Vancouver Island in British Columbia (60 FR 33784; 62 FR 46710; 72 FR 63123; USFWS 2007). In April 2008, the ''Northern Goshawk (*Accipiter gentilis laingi*) Recovery Team'' (NGRT) in Canada released a draft recovery strategy for the Queen Charlotte goshawk. The NGRT reviewed morphometric and radio-telemetry data, and distribution of coastal habitat and prey, and determined that, in addition to Vancouver Island and the Queen Charlotte Islands, the coastal mainland of British Columbia west of the Coast Range (including the Coastal Douglas-fir biogeographic zone and wet Coastal Western Hemlock subzones and variants) is also within the range of the subspecies (NGRT 2008, pp. 3-6). We believe that the NGRT's determination is the best available information on the range of the bird in Canada, and so for purposes of this listing, we propose to adopt the range definition used by the NGRT to define the range of the subspecies in British Columbia.

Previous Agency Action

On November 8, 2007, we published our ''Response to Court on Significant Portion of the Range, and Evaluation of Distinct Population Segments, for the Queen Charlotte Goshawk'' (72 FR 63123) (Response to Court). That document contains a discussion of all previous Federal actions relating to the petition to list the subspecies. In the Response to Court, we found that Vancouver Island is a significant portion of the Queen Charlotte goshawk's range, that southeast Alaska and British Columbia each support distinct population segments, and that listing is warranted for the British Columbia DPS, but not for the southeast Alaska DPS. We indicated that we would publish a proposed rule to list the British Columbia DPS as either threatened or endangered. This proposal is the result.

New Information

Since our November 8, 2007, Response to Court, new information relevant to goshawk conservation has become available. Specifically, a draft recovery strategy for the Queen Charlotte goshawk in British Columbia (NGRT 2008) defined the range of the subspecies to include the coastal mainland west of the Coast Mountains, in addition to Vancouver Island and the Queen Charlotte Islands. The strategy also reviewed threats to the subspecies and identified potential strategies and actions to recover populations in British Columbia.

Additionally, a new land use agreement was signed by the Haida Nation and the Province of British Columbia. The agreement designates new protected areas on the Queen Charlotte Islands and commits the Province to ''Ecosystem Based Management'' of forest resources. Details about how the of the Ecosystem Based Management scheme will be implemented are currently being developed and are not yet available.

Finally, the 1997 Tongass Land Management Plan, which defined management for most of the Queen Charlotte goshawk's habitat in adjacent Southeast Alaska, was revised and replaced with a new forest plan in January 2008 (USDA Forest Service 2008). The new 2008 forest plan retains most of the Conservation Strategy set forth in the 1997 plan for the Tongass National Forest in Southeast Alaska, while modifying some standards and guidelines related to goshawk nest buffers, partial harvest requirements, and areas that would be available for timber harvest (USDA Forest Service 2008).

Review of the British Columbia DPS

Section 3(16) of the Act defines ''species'' to include ''any distinct population segment of and species of vertebrate fish or wildlife which interbreeds when mature.'' To interpret and implement the DPS provisions of the Act and Congressional guidance, the Service and the National Marine Fisheries Service published a ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (DPS policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS policy, three factors are considered in a decision concerning the establishment and classification of a possible DPS. The first two factors—discreteness of the population segment in relation to the remainder of the taxon and the significance of the population segment to the taxon to which it belongs—bear on whether the population segment is a valid DPS. If a population meets both tests, we consider it a DPS and then the third factor—the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification, i.e., whether the population segment is endangered or threatened—is applied.

In our Response to Court (72 FR 63128), we determined that Queen Charlotte goshawks in British Columbia were distinct from those in southeast Alaska, with differences in conservation status, habitat management, and

regulatory mechanisms. We also found that the population segments in British Columbia and southeast Alaska were both significant as defined by our DPS policy, and concluded that two valid DPSs exist.

We have estimated the effects of new protected areas on the Queen Charlotte Islands, and inclusion of the mainland coast of British Columbia, on future landscape condition in British Columbia (USFWS 2008), and have considered the modifications made to the 1997 Tongass Land Management Plan, as reflected in the 2008 forest plan. Significant differences in management regimes remain. For example, we estimate that approximately 31 percent of the remaining old growth will ultimately be harvested and thereby converted to second growth in British Columbia, while only 12 percent of the remaining old growth will be harvested and converted to second growth in Southeast Alaska (USFWS 2008, Table A-17). When considered together with areas already harvested, we estimate that 59 percent of the original productive old growth will ultimately be harvested in British Columbia, but only 28 percent will be harvested in Southeast Alaska (USFWS 2008, Table A-9). We conclude that management of forest habitat remains sufficiently different between Alaska and British Columbia to support our previous conclusion that the international border separates two discrete populations based on differences in habitat management and regulatory mechanisms. We also conclude that the British Columbia population remains biologically and ecologically significant within the meaning of the DPS policy, for the reasons set forth in the Response to Court. Thus, we conclude that the British Columbia population remains a distinct population segment under the DPS policy.

Factors Affecting the British Columbia DPS

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species on the basis of any of five factors, as follows: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Information regarding the status of, and threats to, the British Columbia DPS of the Queen Charlotte Goshawk in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

This proposed rule addresses the finding in our Response to Court (72 FR 63128) that listing as threatened or endangered is warranted for the British Columbia DPS. Below, we provide a summary of our analysis of threats to the British Columbia DPS from the Response to Court, along with a new analysis of threats to the DPS in light of relevant new information. We have included statistics on habitat availability and forest management where they are available. Our primary sources of forest data include the British Columbia Ministry of Forests and Range (especially Niemann 2006 for Vancouver Island and the coastal mainland) and Leversee (2006) for the Queen Charlotte Islands. Our analysis of forest statistics is detailed in an updated appendix to our status review (USFWS 2008), in which our data sources, assumptions, and calculations are described. We also rely on the NGRT evaluation of the threats discussed below (NGRT 2008, pp. 16-21).

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

Mature and old-growth forest provides nesting and foraging habitat for goshawks, and supports populations of preferred prey (Iverson *et al.* 1996, pp. 16-18 and 41-44; Ethier 1999, pp. 61-68; McClaren 2004, pp. 6-7). Logging within and near nest stands has been implicated in nest site abandonment, although effects of such logging have varied from nest area abandonment in some study areas to no effect on productivity elsewhere (Crocker-Bedford 1990, pp. 263-266; Penteriani and Faivre 2001, p. 213; Doyle and Mahon 2003, p. 39; Mahon and Doyle 2005, pp. 338-340, Doyle 2006, pp. 138-139). Clearcut logging generally reduces prey populations (USFWS 2007, pp. 62-64), although, in some cases, sooty grouse populations may increase temporarily following logging (Hartwig 2003). Logging also impacts foraging habitat by removing perches and hunting cover, creating openings and dense second-growth stands that are avoided by goshawks (Iverson *et al.* 1996, p. 36).

''Productive forest'' is defined by the British Columbia Ministry of Forest and Range as forest capable of producing trees large enough to be commercially viable as timber (i.e., ''merchantable'') (Niemann 2006, p. 1). Such forests, when mature, provide suitable structure for goshawk nesting and foraging. We, therefore, use the British Columbia Ministry of Forest and Range's definition of, and statistics on, productive forest as a measurable approximation of goshawk habitat. Unless otherwise specified, discussions of mature, old-growth, and second-growth forests below refer to productive forest only. Areas of non-productive (or ''scrub'') forest of smaller trees (which are not included in the cited forest statistics) may be used by goshawks for foraging or other activities, but are generally not used for nesting (Iverson *et al.* 1996, pp. 41-44).

Studies of goshawk habitat within and outside the range of the Queen Charlotte subspecies suggest that landscape with at least 40 to 60 percent mature or old forest are favored for nesting (Patla 1997, pp. 71-72; Finn *et al.* 2002, pp. 434-435, Doyle 2005, pp. 12-18). For example, each of the 10 nesting territories known on the Queen Charlotte Islands in 2004 contained at least 41 percent mature and old-growth forest, although only 4 territories (each containing at least 60 percent mature and old-growth forest) were successful during the preceding 3–year period (2002-2004)(Doyle 2005, p. 14). Reynolds *et al.* (1992, p. 27) recommended at least 40 percent of goshawk home ranges be maintained in mature or old forest cover in the southwest United States, with another 20 percent in middle-aged forest cover. Given these observations, we consider landscapes on the coastal islands with less than 40 percent cover by mature and old-growth forest to be poor-quality habitat, those with 40 to 60 percent mature and old-growth forest moderate-quality habitat, and those with greater than 60 percent mature and old-growth habitat high-quality habitat.

Goshawks may nest successfully in areas with lower proportions of mature and old-growth forest where prey adapted to more open habitats is available, or during years with high prey populations (Doyle 2006, pp. 138-139; Doyle 2007, p. 2; Doyle and Mahon 2003, p. 1; Iverson *et al.* 1996, p. 55; USFWS 2007, p. 36). Snowshoe hares (*Lepus americanus*), an important prey species for the goshawk in some areas, are found along edges and in open habitats on the mainland coast (Nagorsen 2002, pp. 92-93), so lower proportions of mature and old-growth forest may be suitable there, depending on availability of prey. Cottontail rabbits (*Syvilagus floridans*), a potential prey species that occurs along edges of open habitats, have recently been introduced on Vancouver Island (Nagorsen 2002, p.

96), but they are restricted to the southern edge of the island, and have not been documented in the goshawk's diet there.

No studies definitively establish the amount of mature and old-growth forest required where prey adapted to more open habitats are available, but we expect it to be lower than where such prey are not available, and we expect it to depend largely on prey density, which varies spatially (across the landscape) and temporally (from year to year). Snowshoe hares likely add flexibility to goshawk diets on the mainland, especially during the winter, and probably allow nesting in some areas where it may not otherwise occur, although this effect is probably negligible during years of low hare populations. We conclude, based on the available information, that on average, landscapes on the mainland with less than 30 percent mature and old-growth forest cover are poor habitat, 30 to 50 percent mature and old-growth forest moderate habitat, and greater than 50 percent mature and old-growth forest high-quality habitat.

Productive forest (capable of producing commercially viable timber) covers approximately 45 percent of the 42-million-acre (ac) (17-million-hectare (ha)) Coast Forest Region delineated by the British Columbia Ministry of Forests and Range, which approximates the range of the Queen Charlotte goshawk in Canada (USFWS 2008, Table A-20). Therefore, on average, habitat was probably only of moderate quality for goshawks (30 to 50 percent mature and old growth) prior to wide-scale timber harvest, although some areas would have been, and remain, unsuitable (e.g., large alpine areas), while other areas had extensive tracts of high-quality habitat before logging began.

Industrial-scale logging began in the coastal rainforests of British Columbia in the early 1900s, peaked in the 1980s, and has remained relatively high since then (USFWS 2007, pp. 89-90). By 2002, timber harvest had converted approximately 5.2 million ac (2.1 million ha) (28 percent) of the 19 million ac (7.6 million ha) of productive forest in coastal British Columbia to second growth. This has reduced mature and old forest cover to approximately 34 percent of the landscape (USFWS 2008, Table A-20). This percentage translates, on average, to poor-quality habitat on the islands (less than 40 percent cover by mature and old-growth forest), and of moderate quality on the mainland (30 to 50 percent mature and old-growth forest). Again, naturally non-forested areas have always been unsuitable or poor-quality habitat, and some areas likely still provide high-quality habitat, but in general, habitat quality has declined and is probably moderate-to-poor quality in many areas, due to timber harvest.

More than 100 new protected areas totaling approximately 3 million ac (1.2 millon ha) were established on the British Columbia mainland coast in 2006 (BCMAL 2006, p. 1). This was followed by a December 2007 land use agreement between the Province of British Columbia and the Haida Nation, designating new protected areas totaling 628,000 ac (254,000 ha) on the Queen Charlotte Islands (BCOP 2007, pp. 1-2). Approximately 5.6 million ac (2.2 million ha) of the 42-million-ac (17-million-ha) Coast Forest Region is now in protected status, where timber harvest is not allowed. We estimate that protected areas include approximately 2.9 million ac (1.2 million ha) of productive forest (USFWS 2008, Table A-19). Most of this is likely old growth, although statistics on forest age within the new protected areas are not available.

Our status review in 2007 indicated that continued logging on the coastal islands of British Columbia would convert another 1.2 million ac (480,000 ha) (26 percent) of the remaining productive old-growth forest to second growth over the next 50 years (USFWS 2007, Appendix A, Tables A-9 and A-15). Future timber harvest in three of the seven Forest Districts in the Coast Forest Region (North Coast, Central Coast, and Queen Charlotte Islands Districts) will be planned using ''Ecosystem Based Management.'' Although the requirement is intended to support a sustainable economy while protecting a healthy ecosystem, no specifics have been released (BCMAL 2006, pp. 2-3; BCOP 2007, pp. 1-2, BC 2008, p. 1). In the absence of any details about implementation of this management scheme, we rely on data and projections currently available based on existing management practices (summarized in USFWS 2007, pp. 82-101; USFWS 2008, Tables A-1 to A-20; NGRT 2008, pp. 6-23; see also *Southwest Center for Biological Diversity* v. *Babbitt*, 939 F.Supp. 49 (D.D.C. 1996)). Future harvest levels are uncertain, but additional conversion of old-growth forest to second growth is expected to continue throughout the DPS.

For the purposes of evaluating threats and recovery strategies, the NGRT has divided the British Columbia range of the Queen Charlotte goshawk into four Conservation Regions: Haida Gwaii (Queen Charlotte Islands), Vancouver Island, North Coast, and South Coast (NGRT 2008, pp. 4-6). They reviewed the best-available scientific information and, where data were unavailable, used expert opinion and data-derived estimates (NGRT 2008, p. 16). They consider threats to the goshawk from habitat loss and fragmentation to be low to moderate in the North Coast region, moderate in the South Coast region, and moderate to high on the Queen Charlotte Islands and Vancouver Island (NGRT 2008, pp. 16-17). These conclusions are consistent with our understanding of the habitat threats faced by goshawks in British Columbia. Thus, while some risk is present throughout the DPS's range, habitat on the mainland coast, particularly the North Coast, appears to be more secure than on the islands.

In general, although new protected areas should help conserve some of the remaining goshawk habitat, significant degradation has occurred, and we expect continued decline in habitat quality within the range of the British Columbia DPS as old-growth forest available for harvest is converted to second growth. Ultimately, most of the harvested landscape is likely to become low-quality or poor-quality habitat. Reductions in prey populations and loss of perches and hunting cover are likely to have increasingly negative effects on goshawks' ability to hunt prey and feed their young. Based on the available information, we conclude that habitat loss is likely to contribute substantially to loss of long-term viability of Queen Charlotte goshawks in British Columbia. Therefore, we conclude that the present or threatened destruction, modification, or curtailment of habitat or range is a significant threat to the British Columbia DPS of the subspecies.

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

In Canada, the *laingi* subspecies has been federally listed as ''Threatened'' under the Species at Risk Act since 2002 (51 Eliz. II, Ch. 29). British Columbia has included the subspecies on its ''Red List,'' indicating imperiled status, since 1994 (Cooper and Stevens 2000, pp. 3 and 14). In 2004, British Columbia designated the bird a Schedule 1 Species at Risk, indicating vulnerability to forest management and a need for protection beyond that provided by general forest management regulations (BCMSRM 2002, pp. 1-2; Barisoff 2004, p. 2; USFWS 2007, pp. 11-12). Each of these designations provides some protection from harvest. Birds may be taken illegally on occasion, but we have no indication that such activity is common, or that it poses any threat to the subspecies. We do not expect

overutilization for commercial, recreational, scientific, or educational purposes to contribute to population declines or extinction risk. The NRGT considers the threat of human persecution to be low to none (NGRT 2008, pp. 17 and 21). We conclude that overutilization for commercial, recreational, scientific, or educational purposes does not now, or in the foreseeable future, pose a significant threat to the British Columbia DPS of the Queen Charlotte goshawk.

Factor C. Disease or Predation

Disease and predation associated with Queen Charlotte goshawks are not well documented, but small populations such as those on Vancouver Island and the Queen Charlotte Islands can be vulnerable to diseases, particularly when simultaneously stressed by other factors such as prey shortages. The NGRT considers the threat from disease low, but has expressed concern that emerging diseases such as West Nile virus may be difficult to mitigate, if outbreaks occur (NGRT 2008, pp. 16 and 21).

Predation can also suppress small populations, leaving them vulnerable to other population stress factors. Goshawk predators within the British Columbia DPS include great horned owl (*Bubo virginianus*), bald eagle (*Haliaeetus leucocephalus*), American marten (*Martes americana*), wolverine (*Gulo gulo*), and black bear (*Ursus americanus*). Raccoons (*Procyon lotor*), which could take eggs or nestlings, have also been introduced on the Queen Charlotte Islands (Golumbia *et al.* 2003, pp. 13-15). The NGRT considers predation risk low across the range of the DPS (NGRT 2008, pp. 16-20).

No information suggests that disease or predation currently put Queen Charlotte goshawks in danger of extinction in the British Columbia DPS, but either disease or predation may contribute to extinction risk in the foreseeable future (see Foreseeable Future section below) if their effects are exacerbated by other population stressors such as prey shortages, habitat limitations, or unfavorable weather (which affect nesting effort). We conclude that disease and predation do not currently put the Queen Charlotte goshawk at risk of extinction, although there is moderate risk that either could affect population viability in the foreseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

Direct Take: Throughout Canada, the Species at Risk Act protects the Queen Charlotte goshawk from direct harm, harassment, and take on Federal lands. Individuals, eggs, and occupied nests are protected on all jurisdictions in British Columbia under the provincial Wildlife Act (RSBC 1996, section 34). Possession and trade in the subspecies is forbidden throughout Canada, as is destruction of nests. Based on the available information, regulation of direct take appears to be adequate throughout the DPS.

Habitat Protection: Two mechanisms exist to protect habitat under the Federal Species at Risk Act in Canada: (1) Identification of critical habitat, which may not be destroyed; and (2) conservation agreements, which may be negotiated with any entity or individual. Other mechanisms have been used by the Provincial government to protect goshawk habitat (discussed below), but critical habitat has not yet been formally designated under the Species at Risk Act (NGRT 2008, p. 31).

The Species at Risk Act requires development of a recovery strategy, which identifies the scientific framework for recovery. The NGRT, which includes experts from Provincial and Federal (U.S. and Canadian) government agencies, private consultants, non-government organizations, industry, and First Nations, has produced a draft recovery strategy summarizing natural history, threats, knowledge gaps, and recovery approach (NGRT 2008). A recovery action plan, to define and guide implementation of the recovery strategy, is expected within 2 years after the recovery strategy is finalized (NGRT 2008, pp. i and 34).

The recovery strategy identifies many legal mechanisms for protecting habitat at various scales. Land use planning is perhaps the most broad-scale method used by the British Columbia Provincial Government for establishing protected areas and limits on development to conserve biodiversity across the Province. Approximately 13 percent of the landscape across coastal British Columbia is protected from logging in various parks and reserves. These reserves average approximately 50 percent cover by productive forest (USFWS 2008, Table A-23), so on average they appear to provide moderate- to high-quality habitat. Special management zones, where timber harvest is allowed but non-timber values such as wildlife and recreation are given additional consideration, are also designated in some areas (BC 2000, p. 30).

Logging on Crown (Provincial) lands is regulated by the Forest and Range Practices Act. This statute and its companion regulations set objectives for many resources, and require timber harvest plans describing how each objective will be met. Integrated with the Forest and Range Practices Regulations is the Identified Wildlife Management Strategy (IWM Strategy), which was developed by the British Columbia Government to provide additional protection for species requiring specific measures beyond the ''coarse filter'' system of protected areas and the various regulations governing timber harvest generally. The IWM Strategy provides for establishment of Wildlife Habitat Areas around known goshawk nests, and allows prescription of management measures within those areas (BCMWLAP 2004, pp. 1-4). Where nests are identified, Wildlife Habitat Areas are proposed, usually by Provincial biologists, although anyone may make a proposal. The proposed Area is reviewed and may be modified by the Ministry of Environment, comments are solicited from affected parties, a Timber Supply Impact Analysis is conducted, the proposal is reviewed by a Provincial Committee, and a final decision is made by the Ministry of Environment (BCMWLAP 2004, pp. 4-10). The final decision may reflect compromises intended to reduce impacts on timber operators or others.

Once a Wildlife Habitat Area is designated for goshawks, timber harvest is not allowed in a core area of approximately 500 ac (200 ha) to protect the active nest, alternate nests, and post-fledging habitat. A management plan must be developed for timber harvesting and road construction in the surrounding management zone of about 5,000 ac (2,000 ha) to protect foraging habitat. Non-binding recommendations have been developed to help guide these management plans (McClaren 2004, pp. 10-11). To date, at least 28 Wildlife Habitat Areas covering 36,470 ac (14,765 ha) have been designated for *laingi* goshawks in British Columbia (USFWS 2007, p. 113).

Provincial policy limits the amount of land that may be protected under the IWM Strategy (in Wildlife Habitat Areas or other such mechanisms) to one percent of the short-term timber supply in each Forest District, for all Identified Wildlife species combined. This limitation may be waived with adequate justification, and does not have legal force of law, but is considered a goal of government (BCMWLAP 2004, p. 4; FPB 2004, pp. 7-8). Because the one percent cap is on impacts to the ''short-term'' timber supply, rather than the long-term supply, calculations must be based on mature forest stands. In the South Island Forest District (which covers southern Vancouver Island), less than one-third

of the productive forest is at or near economic maturity, so Wildlife Habitat Areas and other such retentions for Identified Wildlife are limited to approximately one-third of 1 percent of the productive forest in the Timber Harvesting Land Base. Similar situations exist wherever past harvest is extensive, yet these areas have the greatest need for conservation (FPB 2004, pp. 7-8).

Another potential limitation of the one percent cap on goshawk conservation is apparent in areas with high numbers of other at-risk species and continuing threats to those species (Wood and Flahr 2004, pp. 394-395). Southern Vancouver Island, for example, is a biodiversity ''hot spot,'' with a large number of rare and endemic species (Scudder 2003). Some of these species have habitat needs that differ from those of the goshawk, yet their legitimate conservation needs must be accommodated along with the goshawk within the one percent limit. In the South Island Forest District, Wildlife Habitat Areas are approaching, and may have already exceeded, the one percent cap (Wood *et al.* 2003, p. 53).

In 2004, the British Columbia Ministry of Sustainable Resource Management established ''Provincial Non-Spatial Old Growth Objectives'' that must be addressed in Forest Stewardship Plans (Abbott 2004, pp. 1-6). The order established ''Landscape Units'' and old growth forest retention objectives for each of those units. Individual Landscape Units are assigned to low, intermediate, or high biodiversity emphasis, with lower percentages of old-growth retention identified for lower-emphasis units. The exact amount of old growth that must be retained depends on the forest type (biogeoclimatic zone) and the ''natural disturbance regime'' identified for each biogeoclimatic zone variant. Within the Coastal Western Hemlock (*Tsuga heterophylla*) Zone, old growth retention objectives range from 9 to 13 percent; in the Mountain Hemlock (*T. mertensiana*) Zone, objectives range from 19 to 28 percent; and in the Coastal Douglas-fir (*Pseudotsuga menziesii*) Zone, 9 to 13 percent. The objectives are termed ''non-spatial'' because they describe amounts but not specific areas to be retained, unlike other orders that establish protection of specified areas. In order to meet the non-spatial, old-growth objectives, tenure-holders and Timber Supply Area managers can rely on existing protected areas such as Wildlife Habitat Areas, riparian reserves, inoperable lands, and other designations that result in retention of old-growth stands.

The Province of British Columbia has made significant progress in implementation of several elements of their conservation program for goshawks, as described above. A draft recovery strategy has been released. Several of the actions identified in the draft strategy have begun; others are likely to be implemented once the Recovery Implementation Group completes an action plan (NGRT 2008, pp. 21-32). It is likely that the identified strategies will assist in long-term conservation of the subspecies in British Columbia. The strategy, however, is currently in draft form with an action plan not anticipated for 2 years (NGRT 2008, p. 34).

In summary, the Province's Protected Area Strategy protects 13 percent of the land area, and 13 percent of the productive forest, in parks and other reserves within the range of the British Columbia DPS. We believe that this is inadequate, by itself, to support a viable population of goshawks because much of the protected land is not forested, and because goshawks are dispersed at low densities across a vast landscape and are likely to need more than 13 percent of the landscape in suitable condition (specifically, mature and old-growth forest). Management of timber lands within the province continues to evolve with increasing emphasis on conservation of non-timber values associated with forests, including goshawks. However, the Province's Identified Wildlife Management Strategy, which allows for designation and protection of Wildlife Habitat Areas around goshawk nests, is limited by a policy-level cap of one percent of the short-term timber supply. We acknowledge that much work is underway in the Province to address the threats and conservation needs of Queen Charlotte goshawks. Because much of the regulatory framework is relatively new, some key elements of the recovery effort have not yet been fully developed or implemented, so it is difficult at this time to assess their potential effectiveness (see Conservation Efforts, below).

We conclude that continued development and implementation of regulatory mechanisms will be required to minimize the risk of extinction for the British Columbia DPS of the Queen Charlotte goshawk. Existing regulatory mechanisms do not appear to adequately reduce the threat posed to goshawk habitat from timber harvest at this time.

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

We are not aware of current population-level threats to Queen Charlotte goshawks due to competition for either prey or nest sites. The NGRT rates this threat as low across the DPS (NGRT 2008, p. 16). Competition among herbivores has been implicated in grouse declines on the Queen Charlotte Islands, however, where introduced deer have reportedly overbrowsed blueberries and other important grouse foods, resulting in grouse population declines (Golumbia *et al.* 2003, pp. 10-11; Doyle 2004, pp. 15-16). This has probably reduced goshawk nesting effort (number of pairs attempting to nest) on the Queen Charlotte Islands during periods of low squirrel density, when goshawks might otherwise have nested if grouse had been more abundant. Predation on sooty grouse eggs and nestlings by introduced raccoons may also be a factor contributing to grouse population declines on the Queen Charlotte Islands (Golumbia *et al.* 2003, pp. 13-15).

Threats due to low prey diversity are considered low on the mainland, moderate on Vancouver Island, and high on the Queen Charlotte Islands (NGRT 2008, pp. 16 and 18) (see previous discussion under Factor A).

We know of no contaminants that pose current or potential future threats to goshawks within the British Columbia DPS.

Natural disasters such as windstorms, landslides, avalanches, earthquakes, tsunamis, and volcanic eruptions could affect localized areas within the British Columbia DPS, but are not believed to pose population-level threats, either now or in the foreseeable future. Large, landscape-altering forest fires, insect infestations, or tree diseases could pose population-level threats to Queen Charlotte goshawks in the British Columbia DPS if they affect major portions of either Vancouver Island or the Queen Charlotte Islands, both of which support contiguous blocks of forest habitat on one or two large islands, rather than on many islands as in the southeast Alaska DPS. Global climate change could increase the frequency and severity of large fires, forest pests, or forest diseases (Bachelet *et al.* 2005, pp. 2244-2248), but we do not know how likely such events might be. Increases in forest cover, as cool-adapted species invade alpine areas and plant communities generally shift northward (Hamann and Wang 2006, pp. 2780-2782), could increase the amount of habitat available to goshawks,

but such gains could be offset by loss of forest cover elsewhere. We conclude that climate change is likely to have mixed effects on goshawks. The possibility exists that landscape-level changes due to climate change could negatively affect the British Columbia DPS of the Queen Charlotte goshawk, but these threats do not currently place the DPS in danger of extinction, nor do we expect them to in the foreseeable future.

The small goshawk population on the Queen Charlotte Islands appears to be genetically distinct from goshawks elsewhere and may be genetically isolated (Gust *et al.* 2003, p. 22; Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1). Isolated populations such as the one on the Queen Charlotte Islands are typically at greater risk of extinction or genetic problems such as inbreeding depression and loss of genetic diversity, particularly where populations are small (Lande 1988, pp. 1456-1457; Frankham *et al.* 2002, pp. 312-317). Inbreeding depression is a reduction in viability and fecundity that occurs as large populations decline and rapid inbreeding produces increased prevalence of harmful genes that are typically rare in larger populations (Lande 1988, p. 1456). Loss of genetic diversity occurs as populations are reduced, and can diminish future adaptability to a changing environment. The NGRT considers threats from genetic isolation to be high for the Queen Charlotte Islands, and low to none elsewhere in British Columbia (NGRT 2008, pp. 16, 18-19). We concur with this assessment.

Hybridization can be a threat when related species or subspecies interbreed, diluting the genetics of the smaller population. Populations on Vancouver Island apparently interbreed with the subspecies of goshawk that inhabits much of mainland North America, *Accipiter gentilis atricapillus* (Gust *et al.* 2003, p. 22; Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1). This seems likely given the proximity of Vancouver Island to the mainland. On the mainland, the Queen Charlotte goshawk (*A. g. laingi*) inhabits wet coastal forests, but likely interbreeds with the interior subspecies (*A. g. atricapillus*) within the drier coastal western hemlock zones between coastal and interior forests. The NGRT considers this a transition zone between the two subspecies, but concludes, based on limited sampling, that ''Vancouver Island and (coastal) mainland B.C. populations (of *A. g. laingi*) do not appear to be interbreeding with interior B.C. populations (of *A. g. atricapillus*) (NGRT 2008, pp. 3, 6, and 18). We have no information indicating that *A. g. atricapillus* goshawks are expanding into the range of the Queen Charlotte goshawk, and we consider the transition zones between the subspecies to be stable. We therefore conclude that hybridization does not pose a significant threat to the continued survival of the Queen Charlotte goshawk, now or in the foreseeable future.

The breeding population across the British Columbia DPS appears to be about 352 to 374 pairs (NGRT 2008, p. 8). Small populations such as this are at greater risk of extinction than larger populations from environmental stochasticity (random or otherwise unpredictable events such as disease epidemics, prey population crashes, or environmental catastrophes), which can reduce the population to a density at which it is vulnerable to demographic stochasticity (fluctuations in birth and mortality rates) (Engen *et al.* 2001, p. 794; Adler and Drake, 2008, p. 192).

We conclude that the British Columbia DPS of the Queen Charlotte goshawk is not currently in danger of extinction due to other natural and manmade factors (Factor E) such as competition, contaminants, natural disasters, climate change, or genetic problems resulting from hybridization or isolation. However, due to its small population size, this DPS is likely to be vulnerable to prey fluctuations, hybridization (on Vancouver Island), or inbreeding depression (on the Queen Charlotte Islands) in the foreseeable future. Each of these potential threats would likely become more important if habitat modification causes population declines, exacerbating the impact of the threats.

Conservation Efforts

Section 4(b)(1)(A) of the Act requires us to determine if a species should be listed ''after taking into account those efforts, if any, being made...to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices.'' We consider existing regulatory mechanisms and other efforts underway in British Columbia to conserve goshawks and goshawk habitat in our analysis of the five listing factors, above. In many cases, conservation actions are planned, but have not yet been implemented. In other cases, conservation efforts may be underway, but their effectiveness is uncertain. To help guide evaluation of such efforts, the Service published a ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (PECE Policy) (68 FR 15100, March 28, 2003). The PECE Policy ''applies to those formalized conservation efforts that have not yet been implemented or have been implemented, but have not yet demonstrated whether they are effective at the time of a listing decision.'' For efforts meeting these criteria, the policy directs us to consider (1) the certainty that a conservation effort will be implemented, and (2) the certainty that the effort will be effective.

British Columbia's draft Recovery Strategy identifies several broad strategies and recommended approaches to address threats to the goshawk, with specific actions listed to address each approach (NGRT 2008, pp. 26-30). Because the recovery strategy itself is draft, it does not meet the PECE Policy's definition of a formalized conservation effort (68 FR 15104, **SUPPLEMENTARY INFORMATION**, Response 17). Many of the actions listed in the draft recovery strategy, however, have already been implemented and warrant evaluation as formalized conservation efforts. We also evaluate actions identified in the draft recovery strategy that have not yet been implemented, because we believe that the NGRT intends to pursue them.

Among the actions that have not yet been implemented are predictions of habitat changes resulting from climate change, monitoring and modeling of West Nile Virus impacts, and monitoring of edge-adapted competitors and predators. The draft Recovery Strategy is a broad-scale document that does not provide details on who would be responsible for implementing the identified actions, the source and security of funding, legal authorities, procedural and legal requirements (permits, authorizations and permissions, etc.), and volunteer (e.g., landowner or timber tenure holder) participation necessary to implement the actions, as required for us to conclude with a high level of certainty that the actions will be implemented (PECE Policy, 68 FR 15114-15115).

Among the actions identified in the draft strategy that have already begun, the most highly developed is protection of habitat using existing authorities and mechanisms. These are described in NGRT (2008) Appendix 1, and are evaluated above under Factor D (inadequacy of existing regulatory mechanisms). We consider habitat protection an effective strategy, but cannot conclude that implementation under existing mechanisms adequately removes the threat posed to the Queen Charlotte goshawk from habitat loss.

Other actions listed in the draft Recovery Strategy have been implemented (or have begun and are ongoing), but have not yet been proven effective. Included in this category are:

• Development of general wildlife measures to ensure sufficient foraging habitat outside Wildlife Habitat Areas,
• Landscape modeling to identify habitat availability,
• Research and implementation of silviculture methods to promote prey populations,
• Development and implementation of management plans for introduced species,
• Development and implementation of outreach and education for landowners and resource managers,
• Effectiveness monitoring of habitat management,
• Development and use of spatially explicit population models and genetic samples to define population and distribution objectives,
• Use of habitat conservation tools to conserve and recover populations in each conservation region, and
• Identification and monitoring of prey populations.

The PECE Policy lists six criteria necessary to establish that a conservation effort will be effective in adequately reducing threats to a level that listing a species as threatened or endangered is not necessary. These criteria include (1) a description of the threats addressed by the conservation effort, (2) explicit, incremental objectives for the conservation effort and dates for achieving the objectives, (3) the steps necessary to implement the conservation effort, (4) quantifiable measures to demonstrate progress toward, and achievement of, objectives, (5) provisions for monitoring and reporting progress on implementation and effectiveness, and (6) incorporation of adaptive management principles (68 FR 15115). The draft Recovery Strategy is a broad-level planning document that describes threats to the goshawk and provides recommendations for addressing those threats. It lacks detail on implementation of the recommended actions. A recovery action plan, which will likely provide much of the detail described in the PECE Policy, is expected within 2 years of finalizing the draft Recovery Strategy. Meanwhile, we are not aware of currently available documents that provide the information (criteria 1 through 6, immediately above) necessary to ascertain with a high level of certainty that the actions will be effective.

A major conservation effort recently announced by the Province of British Columbia is Ecosystem Based Management for lands managed for multiple uses in the Central Coast, North Coast, and Haida Gwaii regions (BCMAL 2006, pp. 1-3; BCOP 2007, pp. 1-2). Ecosystem Based Management ''is a new adaptive approach to managing human activities that ensures the coexistence of healthy ecosystems and communities. The intent is to support a sustainable economy while protecting a healthy ecosystem'' (BCMAL 2006, p. 2). Key elements include establishment of protected areas; higher standards for key environmental values; use of traditional, local, and scientific knowledge to develop management targets; recognition of Aboriginal and other local interests in land use planning and management; and promotion of stability, certainty, and long-term resource use (BCMAL 2006, p. 2).

The British Columbia government has moved to implement Ecosystem Based Management on the mainland coast and, more recently, the Queen Charlotte Islands. Land use agreements have been reached with various First Nations, and efforts are underway to identify lands for protection. We have a high level of certainty that Ecosystem Based management will be implemented in some form, although details of which lands will be protected, and how timber harvest will be regulated, are not yet available. We expect that protection of additional areas will result in reduced logging overall, although the rate of logging on the remaining lands is not known. We therefore cannot be sufficiently certain that the program will reduce threats to goshawks to a level that listing as threatened or endangered is no longer necessary.

Foreseeable Future

The term ''threatened species'' means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term ''foreseeable future.'' However, in a January 16, 2009, memorandum addressed to the Acting Director of the U.S. Fish and Wildlife Service, the Office of the Solicitor, Department of the Interior, concluded, ''. . . as used in the ESA, Congress intended the term 'foreseeable future' to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species.'' In a footnote, the memorandum states, ''In this memorandum, references to 'reliable predictions' are not meant to refer to reliability in a statistical sense. Rather, I use the words ''rely'' and ''reliable'' according to their common, non-technical meanings in ordinary usage. Thus, for the purposes of this memorandum, a prediction is reliable if it is reasonable to depend upon it in making decisions'' (M-37021, January 16, 2009).

We assess foreseeable future in terms of the threats to the species in question. Threats to the British Columbia DPS of the Queen Charlotte goshawk are primarily related to habitat loss. Other threats are likely to be significant only if populations decline to critically low levels. We expect the amount of suitable goshawk habitat to continue to decline until all the old growth available for harvest has been converted to second growth. At that time, we expect the amount of habitat to stabilize, with less habitat than is available today. Thereafter, logging will be limited to the second growth, which we expect will be harvested on a sustained-yield basis. Because second-growth stands provide suitable goshawk habitat for only the final 10 to 20 percent of each timber harvest rotation (USFWS 2007, pp. 62-67), we estimate that approximately 15 percent of the second growth will be mature, at any given time, and will provide suitable nesting and foraging habitat, while 85 percent will be younger, and provide largely unsuitable habitat (USFWS 2007, pp. 99 and 131). While we recognize that ongoing changes in management regimes, market conditions and technology may affect the intensity and pace of habitat loss, we consider logging projections provided by the BC Ministry of Forests and Range, and by the individual Tree Farm License holders, to be the best information available at this time for evaluating habitat trends and threats into the future. In our review, we used such projections to estimate how much old-growth and mature second-growth forest would be available after all available old growth has been converted to second growth, which we expect to occur in approximately 50 years (USFWS 2007, pp. 85-91 and pp. 103-104; USFWS 2008, Tables A-1 and A-10 to A17).

Wildlife populations typically continue to decline for several generations after habitat loss has occurred, as the populations reach equilibrium with their habitat and competitors (Tilman *et al.* 1994, pp. 65-66). Therefore, extinction may occur many years after habitat loss has ceased. We do not know precisely how long it will take before the population stabilizes or goes extinct following habitat loss, but we do expect the goshawk population to continue to decline for several generations after habitat loss peaks in about 50 years. We therefore define foreseeable future for the British Columbia DPS as approximately 50 years plus a period of

up to several generations for the population to adjust.

Conclusion

Our analysis of threats suggests that as additional forest is logged, habitat quality will continue to decline for the British Columbia DPS of the Queen Charlotte goshawk and its prey. With reduced prey populations, and less favorable habitats in which to hunt, we expect that Queen Charlotte goshawks within the British Columbia DPS would have reduced nesting success. Ultimately, this is expected to result in even smaller populations than currently occur (352 to 374 breeding pairs). Smaller populations likely would become increasingly vulnerable to factors such as predation, disease, prey fluctuations, hybridization, and inbreeding depression. We conclude, therefore, that while extinction is not imminent, the Queen Charlotte goshawk is in danger of extinction in the foreseeable future within the British Columbia DPS. Therefore, we propose to list the Queen Charlotte goshawk in portions of British Columbia (not including the Queen Charlotte Islands, as explained below) as a threatened species under the Act.

Significant Portions of the British Columbia DPS's Range

We now consider whether more immediate threats place the goshawk in imminent danger of extinction in any significant portion of the DPS's range. The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by the statute.

For purposes of this finding, a significant portion of a species' (or subspecies' or DPS's) range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. Adequate representation ensures conserving the breadth of the genetic makeup of the species needed to conserve its adaptive capabilities. Populations in peripheral areas, for example, may be important in this aspect. Resilience refers to the ability of a species to recover from periodic disturbances or environmental variability. In general, a species is usually most resilient in highest quality habitat. Redundancy of populations is needed to provide a margin of safety for the species to withstand catastrophic events. The contribution of the range portion must be at a level such that its loss would result in a decrease in the ability to conserve the species. It does not mean that if such portion of the range were lost, the species as a whole would be in danger of extinction immediately or in the foreseeable future; rather, that the ability to conserve the species would be compromised.

Vancouver Island: We previously found that Vancouver Island is a significant portion of the Queen Charlotte goshawk's entire range (Response to Court, 72 FR 63128; November 8, 2007). This determination was based on the amount of habitat and proportion of the rangewide population still occurring on Vancouver Island, and the importance of the population there to redundancy and resilience of the subspecies, rangewide.

The NGRT estimates that Vancouver Island supports 165 (44 to 47 percent) of the 352 to 374 breeding pairs within British Columbia (NGRT 2008, p. 8). Loss of this large percentage of the small population would clearly result in a meaningful decrease in redundancy across the DPS. Geographically, Vancouver Island covers 27 percent of the DPS's range (NGRT 2008, p. 6). Thus, although Vancouver Island comprises about 25 percent of the DPS's range in British Columbia, it supports nearly half of the breeding pairs.

Approximately half of the original goshawk habitat remains on Vancouver Island (USFWS 2008, Table A-10). Goshawks there nest in both old-growth and mature forest. Nesting densities (as measured by mean distance between nesting areas) are higher on Vancouver Island than on the Queen Charlotte Islands or in southeast Alaska (NGRT 2008, p. 8), suggesting that prey availability is good and other necessary resources are available. Because the remaining habitat appears to be of high quality, we believe that the habitat on Vancouver Island contributes significantly to the resiliency of the DPS, as defined above.

Preliminary genetic results suggest that goshawks on Vancouver Island may be genetically distinct from goshawks on the Queen Charlotte Islands (Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1). These potentially significant findings, if confirmed, suggest that loss of the Vancouver Island population would reduce both representation and resilience of the subspecies, as defined above. This genetic diversity, for example, may help the subspecies respond and adapt to future environmental changes, particularly as warmer-adapted forest communities move northward in response to climate change.

Because the Queen Charlotte goshawk population on Vancouver Island contributes to the redundancy and resiliency of the British Columbia DPS, and may provide important genetic representation, we conclude that Vancouver Island is a significant portion of the DPS.

Threats on Vancouver Island: Approximately 13 percent of the landscape, but only 9 percent of the productive forest, on Vancouver Island is protected in reserves (USFWS 2008, Tables A-9 and A-23). Mature and old-growth forest currently covers approximately 42 percent of Vancouver Island (USFWS 2008, Table A-21), suggesting that habitat, on average, is of moderate quality.

We estimate that an additional 16 percent of the productive forest (or 31 percent of the remaining old-growth forest) is likely to be harvested over the next 50 years (USFWS 2008, Table A-9), resulting in a landscape with approximately 35 percent cover by mature and old-growth forest (USFWS 2008, Table A-24). We consider this poor habitat. Thus, habitat loss (Factor A) does not pose an immediate threat to the goshawk population on Vancouver Island, but is likely to become a significant threat within the foreseeable future.

The NGRT considers threats from habitat loss and fragmentation high on Vancouver Island (NGRT 2008, p. 16).

There is evidence that goshawks on Vancouver Island hybridize with the mainland (*atricapillus*) form of the northern goshawk to a greater degree than goshawks elsewhere in the DPS or rangewide (Gust *et al.* 2003, p. 22; Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1), except possibly in the ''transition zone'' on the mainland (see discussion above, under Factors Affecting the British Columbia DPS, Factor E). We consider Vancouver Island a ''stable hybrid zone'' (Haig *et al.* 2006, p. 7), where the *laingi* phenotype will continue to be represented in the population.

We do not expect that overutilization (Factor B), predation or disease (Factor C), inadequacy of regulatory mechanisms (Factor D), or other threats, such as prey fluctuations or inbreeding depression (Factor E) will have a disproportionately greater impact on Vancouver Island than elsewhere in the DPS's range.

We do not believe that habitat loss (Factor A) or hybridization rates (Factor E) place goshawks on Vancouver Island in imminent threat of extinction because these threats are of a chronic, long-term

nature. Continued habitat loss, however, is likely to result in a progressively smaller, more vulnerable population. Therefore, we have determined that proposing to list the species on Vancouver Island as threatened is appropriate.

Queen Charlotte Islands: The Queen Charlotte Islands are believed to support about 10 to 18 breeding pairs, though few nest during poor prey years (Doyle 2005, p. 18; Doyle 2007, p. 8; McClaren 2006, p. 8; NGRT 2008, p. 8). Currently available genetic analyses suggest that the population there may be unique (Talbot 2006, p.1) and genetically isolated (Talbot *et al.* 2005, p. 3). Birds from this population are also apparently more consistently dark than birds from Vancouver Island or southeast Alaska (Taverner 1940, p. 160; Beebe 1974, p. 54; Webster 1988, pp. 46-47). This genetic distinctiveness and strength of phenotypic expression may represent adaptation to a dark, rainforest habitat; lack of prey in open habitats; a diet dominated by avian prey; a periodically prey-poor environment; and an absence of immigration by the mainland subspecies. Loss of this population would eliminate a small but significant pool of the genetic diversity and perhaps genetic purity (genetic coding for the small, dark phenotype) within the subspecies, which could substantially reduce the subspecies' representation and environmental resilience. We conclude that the Queen Charlotte Islands are a significant portion of the DPS's range.

Threats on the Queen Charlotte Islands: Habitat loss (Factor A) has been significant on the Queen Charlotte Islands, where about 27 percent of the productive forest has been converted to second growth (USFWS 2008, Table A-9). Mature and old-growth forest covers approximately 52 percent of the landscape, providing moderate-quality habitat, on average (USFWS 2008, Table A-21).

As part of a recent Strategic Land Use Agreement between the Haida Nation and the Province of British Columbia, new protected areas have been established and future logging on the Queen Charlotte Islands will be guided by ''Ecosystem Based Management Objectives'' (BC 2007, pp. 5-22). These actions are likely to reduce future threats from logging, but details of the management regime are not yet available.

New protected areas, announced in December 2007, added 628,000 ac (254,000 ha) of land, including approximately 500,000 ac (202,000 ha) of productive forest, to the reserves on the Queen Charlotte Islands. An estimated 38 percent of the productive forest on the islands is now protected in parks and other reserves (USFWS 2008, Table A-9) where logging is forbidden. When considered in combination with old-growth and mature stands retained within the otherwise harvested landscape, we expect approximately 51 percent of the landscape of the Queen Charlotte Islands to support mature and old-growth forests in the future (USFWS 2008, Table A-24). This should provide habitat of moderate quality.

Harvest of old growth is expected to continue, but projections of future logging rates under the new management regime are not yet available. We anticipate that habitat loss will be less than the 14 percent loss we projected under the previous management regime (USFWS 2007, pp. 99-101; USFWS 2008, Tables A-1, A-13 and A-15). NGRT considers threats to nesting habitat moderate, but threats to foraging habitat, and threats from habitat fragmentation, high on the Queen Charlotte Islands (NGRT 2008, pp. 16-18).

We conclude that habitat loss has been significant and is expected to continue, although this threat will likely be reduced to an unknown extent by implementation of ecosystem based management objectives for logging across the Queen Charlotte Islands. Ongoing logging is constrained by several mechanisms that protect nesting habitat and some foraging habitat. Habitat loss, therefore, does not put the Queen Charlotte Islands at more immediate risk of extinction than elsewhere in the DPS, because a higher proportion of productive old-growth forest has been retained on these islands than elsewhere in the DPS.

Overutilization for commercial, recreational, scientific, or educational purposes (Factor B) is not believed to be a significant risk, and is not expected to contribute to population declines or extinction risk on the Queen Charlotte Islands. The NGRT considers these threats of low magnitude (NGRT 2008, pp. 16 and 21).

Disease and predation (Factor C) are not well documented, but small populations can be vulnerable to diseases (some of which may be currently unknown or just emerging, such as West Nile virus) particularly when those populations are simultaneously stressed by other factors such as prey shortages. The current population is very small and apparently not supplemented by immigration (Talbot *et al.* 2005, pp. 2-3) and therefore has limited genetic diversity. This limited genetic diversity is likely to reduce the population's ability to survive outbreaks of exotic diseases. Small populations may also be suppressed by predation. The NGRT considers threats from predation and disease to be low (NGRT 2008, pp. 16-20), but acknowledges that addressing impacts from disease may be difficult (NGRT 2008, pp. 17-21). We conclude that disease and predation do not currently place goshawks in danger of extinction on the Queen Charlotte Islands, but may contribute to extinction risk, especially if their effects are exacerbated by other population stressors such as prey shortages, habitat limitations, or unfavorable weather (all of which affect nesting effort).

Most of the existing regulatory mechanisms (Factor D) are similar to elsewhere in the DPS (as discussed above). We conclude that, as elsewhere in the DPS, continued development of existing regulatory mechanisms will be necessary to prevent goshawks on the Queen Charlotte Islands from becoming in danger of extinction in the foreseeable future, but inadequacies of the current regulatory regime do not put these goshawks in immediate danger of extinction.

Other factors such as competition, natural disasters, loss of genetic diversity, inbreeding depression, or prey fluctuations (Factor E) can act alone or in combination to reduce survival or fecundity. The goshawk population on the Queen Charlotte Islands is very small, with an estimated 10 to 18 breeding pairs (NGRT 2008, p. 8). In 2007, 9 of 13 known territories were occupied, but only 3 pairs produced young. This was the highest rate of nest activity observed since intensive monitoring began in 2000 (Doyle 2007, pp. 5-9). This small population, which is apparently reproductively isolated from adjacent populations (Talbot *et al.* 2005, p. 3), likely has limited ability to adapt to changes in the environment because its genetic diversity is low. There is also risk of reduced reproductive success due to inbreeding depression. Of particular concern is the limited prey available to goshawks on the Queen Charlotte Islands. Declines in grouse populations, likely caused by introduced deer and raccoons, have resulted in heavy reliance on introduced red squirrels, which are known to fluctuate with cone crops.

The NGRT considers threats from low prey diversity and availability, and from genetic isolation, to be high, threats from introduced species to be moderate, and threats from competition and climate change to be low on the Queen Charlotte Islands (NGRT 2008, pp. 16-20).

We conclude that goshawks on the Queen Charlotte Islands are currently in danger of extinction due primarily to demographic factors (small population size and genetic isolation), which makes them particularly vulnerable to fluctuations of the few available prey species, environmental catastrophes, or disease. The small number of nesting pairs magnifies the impacts of current and potential threats. We propose, therefore, to list the Queen Charlotte goshawk as endangered on the Queen Charlotte Islands, a significant portion of the British Columbia DPS's range.

Mainland British Columbia: The NGRT estimates that the British Columbia coastal mainland covers 64 percent of the subspecies' geographic range in the DPS, and supports approximately half of the breeding population in the DPS (NGRT 2008, pp. 6-8). Goshawks from this portion of the range likely provide immigrants to Vancouver Island, as goshawks have been documented moving between Vancouver Island and the mainland (McClaren 2004, p. 3). The mainland could represent a potential source population, should populations on Vancouver Island decline. Loss of Queen Charlotte goshawks on the mainland would result in a significant gap in the subspecies' distribution, and a significant reduction in the resiliency and redundancy of the British Columbia DPS. We therefore consider the coastal mainland of British Columbia a significant portion of the DPS's range.

Threats on mainland British Columbia: Only 43 percent of the coastal mainland of British Columbia supports productive forest, compared to 68 percent on the Queen Charlotte Islands and 78 percent on Vancouver Island. Approximately 19 percent of that productive forest has been converted to young second growth, resulting in a landscape with only 30 percent cover by mature and old-growth forest (USFWS 2008, Table A-21), which we consider to be habitat of poor to moderate quality. Within that landscape, however, we expect that there are areas of varying sizes with greater forest cover that provide higher quality habitat.

We believe that goshawks on the mainland can successfully use landscapes with lower coverage of mature and old-growth forest than goshawks on the islands, because snowshoe hares and hoary marmots (*Marmota caligata*), which are adapted to open habitats, inhabit the mainland coast, but not the islands (Nagorsen 2002, pp. 92-93 and 100). The Vancouver Island marmot (*Marmota vancouverensis*) inhabits a relatively small area on the south central portion of Vancouver Island (Nagorsen 2002, p. 103). We do not believe that this species is a significant prey source for most goshawks on Vancouver Island because of its restricted distribution. Because prey that use open habitats are widely distributed on the mainland, we consider landscapes with 30 to 50 percent cover by mature and old-growth forest moderate-quality habitat for goshawks there.

As on the Queen Charlotte Islands, future timber harvest in two of the six forest districts on the mainland (North Coast and Central Coast) will be by ''Ecosystem Based Management,'' details of which have not yet been finalized (BCMAL 2006, pp. 2-3).

If productive forest outside designated parks and other reserves is retained in the otherwise logged matrix at a rate similar to on the Queen Charlotte Islands and Vancouver Island (because of inoperable ground and retention to protect non-timber resources), we estimate that 4 million ac (1.7 million ha) of old-growth forest will remain available for harvest on the mainland (USFWS 2008, Table A-22). Harvest of this old-growth forest would result in a landscape of approximately 22 percent mature and old-growth forest (USFWS 2008, Table A-24). We believe that this would, on average, be poor-quality habitat. As in other portions of the Queen Charlotte goshawk's range, some areas would likely provide tracts of higher quality habitat, and some areas would be unsuitable for goshawks. The NGRT considers threats from habitat loss and fragmentation to be moderate in the southern portion of the mainland and low to moderate in the northern portion (NGRT 2008, p. 16). We conclude that habitat loss (Factor A) does not appear to place goshawks on the coastal mainland of British Columbia in imminent danger of extinction, but continued loss of old-growth habitat is likely to reduce habitat quality and contribute to population declines in the foreseeable future.

We do not expect overutilization (Factor B), predation or disease (Factor C), inadequacy of regulatory mechanisms (Factor D), or other threats, such as prey fluctuations, climate change, natural disasters, or inbreeding depression (Factor E) to have disproportionately greater impacts on the mainland than elsewhere in the DPS's range. The NGRT considers each of these threats to be low on the mainland, except that they consider threats from low prey availability moderate in the southern portion of the mainland (NGRT 2008, p. 16).

It is likely that Queen Charlotte goshawks on the mainland encounter the mainland (*atricapillus*) subspecies of the northern goshawk, and that some hybridization occurs, although we are aware of no documentation to confirm this hypothesis. The NGRT considers the drier coastal western hemlock zones on the mainland to be transitional areas between subspecies. As on Vancouver Island, we believe these areas to be stable hybrid zones where the *laingi* form will persist unless changes in habitat favoring the *atricapillus* form occur. Such changes could conceivably be caused by factors such as climate change or timber harvest. Our current understanding of climate change effects is inadequate to allow predictions concerning competitive advantages that may result. Likewise, we are unable to conclude that timber harvest will favor one subspecies over another.

We do not believe that habitat loss (Factor A) or hybridization rates (Factor E) place Queen Charlotte goshawks on the mainland in imminent danger of extinction because these threats are of a chronic, long-term nature. Continued habitat loss, however, is likely to result in poor-quality habitat across a large portion of the range, leading to a progressively smaller, more vulnerable population in danger of extinction in the foreseeable future. Therefore, listing as threatened is appropriate.

In summary, we find that the Queen Charlotte goshawk on the coastal mainland and on Vancouver Island and the surrounding, smaller islands of southern British Columbia is not at imminent risk of extinction, but is likely to become in danger of extinction in the foreseeable future. We therefore propose to list the Queen Charlotte goshawk population in those areas as threatened. We find that because of its small population size and genetic isolation, the Queen Charlotte goshawk population on the Queen Charlotte Islands (an area also known as Haida Gwaii) is at imminent risk of extinction. We therefore propose to list the Queen Charlotte goshawk in this significant portion of the range as endangered. However, it is possible that, with further analysis, we may limit our determination on the status of the Queen Charlotte Goshawk to the DPS level only. That is, we may list the entire DPS as either threatened or endangered in the final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition (through listing), requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in

public awareness, and encourages conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas, and consult with the Service with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Because the British Columbia DPS of the Queen Charlotte goshawk is entirely outside the United States, and is not ''on the high seas,'' section 7 of the Act does not apply to this DPS. Therefore, there will be no requirement to evaluate management actions or consult with the Service. Further, we cannot designate critical habitat in foreign countries (50 CFR 424.12(h)), so we are not proposing critical habitat for the DPS.

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

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, under 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies. These prohibitions would not apply to the Queen Charlotte goshawk within the British Columbia DPS, except as they apply to import into the United States or foreign commerce.

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

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**.

Required Determinations

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of the Rule

We are required by Executive Order 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and, (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A list of the references used to develop this proposed rule is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this proposed rule is Steve Brockmann, Juneau Fish and Wildlife Field Office, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

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 follows:

PART 17—[AMENDED]

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

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

2. Amend § 17.11(h) by adding two new entries for ''Goshawk, Queen Charlotte'' in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 *Endangered and threatened wildlife.*

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Goshawk, Queen Charlotte	*Accipiter gentilis laingi*	Canada (That portion of British Columbia that includes Vancouver Island and its surrounding islands, the mainland coast west of the crest of the Coast Range, and the Queen Charlotte Islands)	Entire, except Queen Charlotte Islands	T		NA	NA
Goshawk, Queen Charlotte	*Accipiter gentilis laingi*	Canada (That portion of British Columbia that includes Vancouver Island and its surrounding islands, the mainland coast west of the crest of the Coast Range, and the Queen Charlotte Islands)	Queen Charlotte Islands	E		NA	NA
*	*	*	*	*	*		*

Dated: October 20, 2009.

Sam D. Hamilton,

Director, Fish and Wildlife Service.

[FR Doc. E9–26154 Filed 11–2–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R9-IA-2009-0056]
[90100-1660-1FLA B6]

[RIN 1018-AW00]

Endangered and Threatened Wildlife and Plants; Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the salmon-crested cockatoo (*Cacatua moluccensis*) as threatened, with a special rule, under the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protections to this species and amend the regulations at 50 CFR part 17 to create a special rule under authority of section 4(d) of the Act that provides measures that are necessary and advisable for the conservation of the salmon-crested cockatoo. The Service seeks data and comments from the public on this proposed listing and special rule.

DATES: We will accept comments received or postmarked on or before February 1, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 18, 2009.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS-R9-IA-2009-0056.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-IA-2009-0056; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mails or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Chief, Branch of Listing, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications devise for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are requesting comments from other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

- Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats;
- Additional information concerning the range, distribution, and population size of this species;
- Any information on the biological or ecological requirements of this species;
- Current or planned activities in the areas occupied by this species and possible impacts of these activities on this species;
- Any information concerning the effects of climate change on this species or its habitats;
- Any information concerning numbers of this species held in captivity in the United States, breeding success, and types of activities that should be addressed in the special rule; and
- The appropriate conservation status for the salmon-crested cockatoo.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.govor* by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171.

Background

Section 4(b)(3)(A) of the Act requires us to make a finding (known as a ''90–day finding'') on whether a petition to add a species to, remove a species from, or reclassify a species on the Federal Lists of Endangered or Threatened Wildlife and Plants has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, we make the finding within 90 days following receipt of the petition and publish our finding promptly in the **Federal Register**. If we find that the petition has presented substantial information indicating that the requested action may be warranted (a positive finding), section 4(b)(3)(A) of the Act requires us to commence a status review of the species if one has not already been initiated under our internal candidate assessment process. In addition, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher priority listing actions (this finding is referred to as the ''12–month finding''). Section 4(b)(3)(C) of the Act requires that a finding of warranted but precluded for petitioned species should be treated as having been resubmitted on the date of such finding, and is, therefore, subject to a new finding within 1 year and subsequently thereafter until we take action on a proposal to list or withdraw our original finding. The Service publishes an annual notice of review (ANOR) of findings on resubmitted petitions for all foreign species for which listings were previously found to be warranted but precluded.

Previous Federal Action

On May 6, 1991, we received a petition (1991 petition) from the International Council for Bird Preservation to add 53 foreign birds to the List of Endangered and Threatened Wildlife, including the salmon-crested cockatoo. In response to the 1991 petition, we published a substantial 90–day finding on December 16, 1991 (56 FR 65207), for all 53 species, and initiated a status review. On March 28, 1994 (59 FR 14496), we published a 12–month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act, which included 15 species from the 1991 petition. In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the salmon-crested cockatoo, was warranted but precluded by higher priority listing actions. We made a subsequent warranted-but-precluded finding for all outstanding foreign species from the 1991 petition, including the salmon-crested cockatoo, as published in our ANOR on May 21, 2004 (69 FR 29354).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), our 2007 ANOR identified the listing priority numbers (LPNs) (ranging from 1 to 12) for all outstanding foreign species. The LPN for the salmon-crested cockatoo was LPN 2. With the exception of listing priority ranking of 1, which addresses monotypic genera that face imminent threats of high magnitude, category 2 represents the Service's highest priority.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species. We announced that listing was warranted for 30 foreign bird species, including the salmon-crested cockatoo, which is the subject of this proposed rule, and stated that we would ''promptly publish proposals to list these 30 taxa.''

On September 8, 2008, the Service received a 60–day notice of intent to sue from the Center for Biological Diversity (CBD) and Peter Galvin regarding alleged violations of section 4 of the Act for the failure to promptly publish listing proposals for the 30 ''warranted'' species identified in our 2008 ANOR. Under a settlement agreement approved by the U.S. District Court for the Northern District of California on June 15, 2009 *(CBD, et al.* v. *Salazar*, 09-cv-02578-CRB), the Service must submit to the **Federal Register** a proposed listing rule for the salmon-crested cockatoo by October 30, 2009. Below, we summarize our analysis of the best available scientific and commercial data on the status of this species.

Species Description

Cockatoos are a distinct group of parrots (order Psittaciformes), distinguished by the presence of an erectile crest (Cameron 2007, p. 1; Collar 1989, p. 5) and the lack of dyck texture in their feathers, which produces blue and green coloration in the plumage of other parrots (Brown & Toft 1999, p. 141). The salmon-crested cockatoo (also known as the Seram, Moluccan, pink-crested, or rose-crested cockatoo) is the largest and the most striking of Indonesia's white cockatoos (Kinnaird 2000, p. 14). Its body length is 46–52 centimeters (cm) (15.6–20 inches (in)), and its plumage varies from pale salmon-pink to whitish-pink. It has a long backward-curving, deep salmon-pink crest; the bill is large and gray-black; and the underwing and undertail are yellow-orange (BirdLife International (BLI) 2000, p. 242; Forshaw 1989, p. 141; Juniper & Parr 1998, pp. 280–281; Sweeney 2000, p. 130). Sexual dimorphism is exhibited by iris color (del Hoya *et al.* 1997, p. 278; Forshaw1989, p. 141; Peratino 1979, p. 125).

Taxonomy

In 1751, Edwards described and pictorially delineated the salmon-crested cockatoo (Lint 1951, p. 223) and, in 1788, J.F. Gmelin named the species *Psittacus moluccensis* (Forshaw 1989, p. 141; Lint 1951, p. 223). In 1937, Peters (1937, p. 175) used the name *Kakatoe moluccensis* (Gmelin) in the *Check-list of Birds of the World*. In 1992, Andrew (1992, p. 21) used the name *Cacatua moluccensis* in the first published checklist of the birds of Indonesia. This name continues to be the recognized scientific name (Integrated Taxonomic Information System (ITIS) 2008, p. 1; Sibley & Monroe 1990, p. 112), and the alternative genus name *Kakatoe* is now obsolete (del Hoya *et al.* 1997, p. 278).

Some references (ITIS 2008, p. 1; Sibley & Monroe 1990, p. 112) place cockatoos in the family Psittacidae with lories and true parrots, whereas others (Cameron 2007, p. 1; Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 2008a, p. 1) place cockatoos in a separate family, Cacatuidae. Of the 21 cockatoo species, 11 are in the genus *Cacatua* (Cameron 2007, pp. 1–3).

The closest relatives of the salmon-crested cockatoo, which is restricted to the South Moluccas, Indonesia (in the east central Indonesian island chain), are the umbrella cockatoo, which is restricted to the North Moluccas, and the blue-eyed cockatoo, which is restricted to the island of New Britain off the northeast coast of New Guinea (Cameron 2007, pp. 38–39, 51). In a biogeographic analysis of the mitochondrial DNA (mtDNA) phylogeny, Brown and Toft (1999, pp. 150–151) suggest that these three species may have had a common ancestor that occupied an ancient landmass comprising Halmahera (a North Moluccan island) and Bismarck. The breakup of this landmass created

two populations, and the subsequent dispersal of cockatoos from the North Moluccas to the South Moluccas created another population, which became the salmon-crested cockatoo (Cameron 2007, p. 56).

Range and Distribution

Cockatoos are only found in Australasia—a few archipelagos in Southeast Asia (Philippines, Indonesia, East Timor, Tanimbar, Bismarck, and Solomon), New Guinea, and Australia—suggesting that the modern species arose after the breakup of Gondwanaland, a southern supercontinent that existed 200–500 million years ago. The 19th century naturalist Alfred Russel Wallace was among the first to note the break in Australasian and Asian fauna. Wallace's line runs between the islands of Bali and Lombok, Borneo and Sulawesi, and south of the Philippines. Cockatoos are present on Lombok and Sulawesi, but not on Bali and Borneo. The line represents the western edge of a zone of overlap between Australasian and Asian fauna (known as Wallacea), with the eastern edge defined by the Australian continental shelf (Lydekker's Line) (Cameron 2007, pp. 1–3; White & Bruce 1986, p. 32).

The oceanic islands of Wallacea have a high level of endemism, which resulted in many islands being identified as Endemic Bird Areas (EBA) (Cameron 2007, p. 56). BLI designates EBAs by mapping bird species with restricted ranges of less than 50,000 square kilometers (km^2) (19,300 square miles (mi^2)) that overlap. The unique biodiversity concentrated in these small areas is particularly vulnerable; thus, EBAs represent priority areas for global biodiversity conservation (BLI 2008i, p. 1; Collar 2000, p. 27; Stattersfield *et al.* 1998, pp. 39, 45). The salmon-crested cockatoo is included in the Seram EBA (BLI 2003, p. 1; Stattersfield *et al.* 1998, pp. 528–531).

Seram. The salmon-crested cockatoo is endemic to the island of Seram (alternate spelling, Ceram), with records from adjacent islands of Haruku, Saparua, and Ambon (formerly called Ambonia) in the South Moluccas (BLI 2001, p. 1662; Forshaw 1989, p. 141; Juniper & Parr 1998, p. 281; Peters 1937, p. 175). The species resides in lowland rain forests up to 1,000 meters (m) (3,608 feet (ft)), remains locally common in Manusela National Park, and appears to be mostly distributed in the eastern part of the island (BLI 2008a, p. 2; Isherwood *et al.* 1998, p. 18). For a listing of specific distribution records of the salmon-crested cockatoo, see BLI (2001, p. 1662).

Ambon. Whether this species is native or introduced to Ambon is uncertain. Stresemann (1934, p. 16) reported that the salmon-crested cockatoo did not occur on Ambon. Thus, some scientists follow the view that the species may have been introduced to this island (Forshaw 1989, p. 141; Lever 1987, p. 245; Long 1981, p. 247; Smiet 1985, p. 189; van Bemmel 1948, as cited in White & Bruce 1986, p. 212). The salmon-crested cockatoo was formerly traded in significant numbers, and shipments of birds from Seram transited through Ambon (the capital of the Maluku Province), where undoubtedly some birds escaped. Other scientists suggest that the cockatoos may well be wild birds (Marsden 1992, pp. 12–13; Poulsen & Jepson 1996, pp. 159–160), with the persistence of a small population in northeast Ambon (Poulsen & Jepson 1996, p. 159).

Haruku and Saparua. The status of the salmon-crested cockatoo on Haruku and Saparua is unknown (Metz 1998, p. 10), and the species may be extinct on these two islands (Metz 2002, p. 1; Snyder *et al.* 2000, p. 68). For Haruku, there is one unspecified locality and date of observation reported (Stresemann 1934, p. 16), but Poulsen and Jepson (1996, p. 160) did not find the species in 1994 or 1996. For Saparua, there is one specimen in the RMNH (Rijksmuseum van Natuurlijke Histoire (Leiden, Netherlands)) recorded in 1923 (BLI 2001, p. 1663).

For purposes of this proposal, we consider the salmon-crested cockatoo's natural range to include Seram and the three islands of Ambon, Haruku, and Saparua. Although the status of the salmon-crested cockatoo is unknown on Haruku and Saparua, the species has been reported from these islands, and we are unaware of any survey that has conclusively found that the species no longer occurs there.

Habitat

The salmon-crested cockatoo is believed to be a specialist of primary lowland forests (Kinnarid *et al.* 2003, p. 228). It occurs at altitudes between 100 and 1,000–1,200 m (328 and 3,608–3,926 ft) (BLI 2008a, p. 2; Bowler & Taylor 1993, p. 149; Juniper & Parr 1998, p. 281), but rarely occurs above 600–900 m (1,968–2,952 ft) (Cameron 2007, p. 77; Marsden 1992, p. 11; Juniper & Parr 1998, p. 281; Smiet 1985, p. 189). Marsden (1992, p. 11) found that cockatoos tended to be recorded in mature, open-canopied lowland forests with some very large, tall trees and some low vegetation. Kinnaird *et al.* (2003, p. 227) found that cockatoo abundance was significantly associated with the presence of potential nest trees (*Octomeles sumatranus*) and strangling figs (*Ficus* spp.). Cameron (2007, pp. 77–78) noted that island cockatoos prefer lowland forests over montane forests because lowland forests contain greater plant diversity and, thus, have a more diverse and abundant food supply. They also support larger trees, which are more likely to have cavities needed for nesting—a critical resource because cockatoos are incapable of excavating their own nest cavities. The salmon-crested cockatoo prefers flat or gently sloping terrain.

The highest densities of birds occur in little-disturbed, lowland forests below 300 m (984 ft), and the lowest densities occur in recently logged forests and in non-forested areas (Marsden 1992, p. 9; Marsden 1998, p. 608). However, Marsden and Fielding (1999, p. 444) were unable to find differences in the species' presence based on habitat associations, and Kinnaird *et al.* (2003, p. 227) found densities did not correspond closely to habitat differences across study sites. Marsden (1992, p. 11) suggested that the apparent differences in cockatoo densities between young logged forests and secondary forests, which have similar vegetation parameters, may be caused by differential trapping pressures and patterns of disturbance, differences in tree species compositions and overall habitat heterogeneity, and differences in cockatoo densities in areas before logging.

Lower densities of birds occur in transition and submontane forests and on the edges of cultivated areas. Birds also occur in open canopy forests with low vegetation and in riverine forests (Juniper & Parr 1998, p. 281). Despite trapping pressure, birds still occur in mature lowland forests near settlements (Juniper & Parr 1998, p. 281; Marsden 1992, p. 11), but they are rarely seen near human habitation (Smiet 1985, p. 189). Marsden (1992, pp. 9, 11) found cockatoos to be rare or irregular in other habitats, including plantations, grassland, rank scrub, and agricultural lands. The species previously occurred in coastal areas (Juniper & Parr 1998, p. 281), before land was converted to human uses (FAO 1981, as cited in Marsden 1992, p. 7). Small numbers of salmon-crested cockatoo have been observed in forested hills on Ambon. No other information was available on the habitat of this species on Ambon, Haruku, and Saparua.

Topography. Seram is a densely wooded island (Metz 1998, p. 10) of 18,625 km^2 (7,189 mi^2) (Smiet 1985, p. 183)—about the size of New Jersey (Morrison 2001, p. 1). The topography is

extremely variable and the interior of the island is rugged and mostly mountainous (Kinnaird *et al.* 2003, p. 228). The island lies between latitudes 2° 46' and 3° 53' south of the Equator. It is approximately 340 kilometers (km) (211 miles (mi)) long and 55–70 km (34–43 mi) wide in the center. Its highest point is Gunung Binaiya at approximately 3,027 m (9,929 ft) above sea level. It is the second largest island in the Moluccas. This group of about 1,000 islands is also known as the Spice Islands, because they include the original home of both nutmeg (*Myristica fragrans*) and cloves (*Syzgium aromaticum*) (Edwards 1993, p. 1).

Forests. Seram's wet climate supports mainly evergreen forests (Marsden 1998, p. 606). The alluvial plains originally supported tall lowland forests characterized by the only endemic dipterocarp on the island, *Shorea selanica* ('meranti'), and also *Canarium, Elaeocarpus sphaericus*, *Calophyllum, Intsia*, and *Myristica* (Coates & Bishop 1997, pp. 16–17; Smiet & Siallagan 1981, p. 7). *Shorea selanica* has developed remarkable dominance in the lowland forests of north Seram, representing about 30 percent of individual trees and 76 percent of the basal area (Edwards *et al.* 1993, p. 66). The forest is relatively open-crowned with a sparse understory, with the floor being swept clean by floods during the wet season. Along the major rivers, the lowland forest is characterized by *Octomeles sumatrana, Eucalyptus deglupta*, *Pometia pinnata, Casuarina equisetifolia*, *Ficus, Litsea*, and *Eugenia* (Coates & Bishop 1997, pp. 16–17).

Climate. Most of Seram receives between 2,500 and 3,000 millimeters (mm) (97.5 and 117 inches (in)) of rain per year, with more in the east and northeast. The long monsoonal seasons (Metz 1998, p. 11; White & Bruce 1986, p. 24) and mountainous terrain affect the amount of rainfall. Annual and monthly rainfall is not uniform and varies by region (Kinnaird *et al.* 2003, p. 228). The island lies outside the main zone of cyclonic storms (Coates & Bishop 1997, p. 22). The lowlands have a humid tropical climate with temperatures at sea level of 25–30 °Celsius (C) (77–86 °Fahrenheit (F)). Temperature decreases with altitude, with a fall of approximately 6 °C (10.8 °F) for every rise of 1,000 m (3,280 ft), leading to a marked temperature gradient within the mountain areas (Edwards 1993, p. 6).

Land use. The human population of Seram is concentrated in low-lying areas along the coast and in the west. The mountainous interior supports very few villages (Edwards 1993, p. 7). The majority of Seram is lowland forest or montane forest (see Table 1). While only about 11 percent of the island has been converted to agricultural lands, settlements, and plantations or is considered unproductive, logging concessions cover nearly 50 percent of the island. About 85 percent of Seram lies below 600 m (1,968 ft) and another 10 percent lies between 600 and 1,000 m (1,968 and 3,280 ft). Within this elevation where cockatoos occur, ''...most of the forest has been classified as production or conversion forest, categories that permit land clearing and forest disturbance'' (Kinnaird *et al.* 2003, p. 230).

TABLE 1. HABITAT AND LAND USE FOR SERAM AND ESTABLISHED AND PROPOSED PROTECTED AREAS

(data are based on landsat images from late 1989 and early 1990) (NP=National Park; NR=Nature Reserve) (Kinnaird et al. 2003, p. 230).

Habitat/Land Use	Area			
	Seram	Manusela NP	Gunung Sahuwai NR	Proposed Wai Bula NR
Lowland Forest	14,026.5 km^2(5,414.2 mi^2)	1,522.5 km^2(587.7 mi^2)	118.9 km^2 (45.9 mi^2)	561.8 km^2 (216.9 mi^2)
Mangrove Forest	77.6 km^2 (30 mi^2)	—	—	9.6 km^2 (3.7 mi^2)
Montane Forest	1,065.3 km^2 (411.2 mi^2)	693.9 km^2 (267.8 mi^2)	—	—
Swamp Forest	203.5 km^2 (78.6 mi^2)	—	—	14.6 km^2 (5.6 mi^2)
Water Body	1.2 mi^2(3.0 km^2)	—	—	—
Agriculture	789.1 km^2 (304.6 mi^2)	50 km^2 (19.3 mi^2)	—	9.6 km^2 (3.7 mi^2)
Plantation	22.0 km^2 (8.5 mi^2)	—	—	—
Settlement	21.3 km^2 (8.2 mi^2)	3.2 km^2 (1.2 mi^2)	—	0.5 km^2 (0.2 mi^2)
Unproductive Lands	1,082.2 km^2 (417.7 mi^2)	53.6 km^2 (20.7 mi^2)	3.9 km^2 (1.5 mi^2)	—
Total	17,288.7 km^2 (6,676.0 mi^2)	2,323.2 km^2 (896.8 mi^2)	122.8 km^2 (47.4 mi^2)	596.1 km^2 (230.1 mi^2)

Important Bird Areas (IBAs)

BLI (2008b, p. 2) has identified five IBAs that include the salmon-crested cockatoo. A site is recognized as an IBA when it meets criteria ''...based on the occurrence of key bird species that are vulnerable to global extinction or whose populations are otherwise irreplaceable.'' These key sites for conservation are small enough to be conserved in their entirety and large enough to support self-sustaining populations of the key bird species. IBAs are a way to identify conservation priorities (BLI 2008j, pp. 1–2). The following briefly describes the IBAs for the salmon-crested cockatoo:

Gunung Sahuwai. Located on the western peninsula of Seram, Gunung Sahuwai contains 122.8 km^2 (47.4 mi^2) of land that was declared a Nature Reserve on November 30, 1993 (SK Menteri Kehutanan No. 805/Kpts-II/1993) (BLI 2008c, p. 2). The Nature Reserve contains 96.8 percent lowland forest and 3.2 percent unproductive lands (see Table 1) (Kinnaird *et al.* 2003, p. 230). The number of cockatoos here is unknown. The coastal area contains 14 settlements. Most people work as farmers and fishermen. The main commodities are cloves, nutmeg, and coconut for copra. The local people hunt and collect forest products. Conservation concerns relate to the clearance of natural habitat for plantation, shifting agriculture, and collection of birds (BLI 2008c, pp. 1–2).

Gunung Salahutu. The habitat is forest, and the topography is hilly up to 1,038 m (3,405 ft). The cockatoo was found in this area at one time, but is probably extinct here now. The coastal area contains two villages. Most of the people work as dry land farmers and fishermen. The main commodities are clove, nutmeg, cacao, and marine products. Conservation concerns relate to forest clearance for plantation, firewood collection, and hunting of animals for consumption or pets (BLI 2008d, pp. 1–2).

Manusela. This area consists of forests and wetlands (BLI 2008e, pp. 1–2). Manusela National Park is located in the central part of Seram and stretches from the north coast to within 5 km (3 mi) of the south coast (Edwards 1993, p. 6). It is 2,323.2 km^2 (896.8 mi^2) in size and covers approximately 10 to 11 percent of Seram (BLI 2008e, p. 2; Bowler & Taylor 1993, p. 158; Kinnaird *et al.* 2003, p. 228; Marsden 1992, p. 7; Smiet & Siallagan 1981, p. 3). It was declared a national park in 1982 (SK Menteri Pertanian No. 736/Mentan/X/1982 on October 14, 1982) (BLI 2008e, p. 2). Based on landsat images from late 1989 and early 1990, habitat and land use for Manusela National Park can be summarized as: 65.5 percent lowland forest; 29.9 percent montane forest; and 4.6 percent agriculture, settlement, and unproductive lands (see Table 1) (Kinnaird *et al.* 2003, p. 230). Approximately, 26 percent of the park is above 1,000 m (3,608 ft), an altitude where the salmon-crested cockatoo generally does not occur, and only 27 percent is below 500 m (1,640 ft), an altitude preferred by the salmon-crested cockatoo (Marsden 1992, p. 7). A road has been built through the park, which increases the risks of logging (Metz 1998, p. 10). Five villages of indigenous people exist as an enclave of the park. Most of the people work as dry land farmers; they also hunt and collect forest products, such as sago, rattan, resin, eaglewood, and parrots (BlI 2008e, p. 1). In 1980, 999 people lived within the park boundaries, and 19,102 lived within 10 km (6 mi) of its boundaries (Smiet & Siallagan 1981, App. 6). Clearing of the land for agriculture and gardens has resulted in a patchwork of cleared fields, secondary vegetation (including large bamboo thickets), old growth forests, and undisturbed primary forests. Conservation concerns relate to logging, road development, encroachment by plantation companies, mining (MacKinnon & Artha 1981; Monk *et al.* 1997, as cited in BLI 2008e, p. 2), shifting agriculture, and parrot catching for trade (BLI 2008e, pp. 1–2).

Pegunungan Taunusa. The habitat is forest and the area has a mountain with the highest peak in Seram. The southern coastal area contains five villages. Most of the people work as farmers and fishermen. Main products are coconut for copra, clove, and cacao (BLI 2008f, p. 1). The Service was unable to find information on the number of salmon-crested cockatoos in this area or activities that may be affecting the conservation of the species in Pegunungan Taunusa.

Wai Bula. The habitat is forest in northeastern Seram. BLI (2008f, p. 1) estimates that Wae Wufa, an area inside Wai Bula that is primary lowland and lower montane evergreen forests, has around 40–60 salmon-crested cockatoos. Approximately 596.1 km^2 (230.1 mi^2) of Wai Bula was proposed as a Nature Reserve in 1981, but the area has never been officially designated as a reserve (Kinnaird *et al.* 2003, p. 228). Land use for the proposed Nature Reserve can be summarized as follows: 94.2 percent lowland forest; 1.6 percent mangrove forest; 2.4 percent swamp forest; and 2.5 percent agriculture and settlement (see Table 1). Based on density estimates derived from surveys in western Seram, researchers estimated that the area provides habitat for a minimum of 2,500 cockatoos (Kinnaird *et al.* 2003, pp. 230, 233) (see Factor A for discussion). This estimate differs significantly from the number of cockatoos estimated by BLI to occur inside Wae Wufa. We were unable to reconcile these estimates because we could not find information on the area of Wae Wufa, how much of the cockatoo's suitable habitat within Wai Bula occurs in Wae Wufa, and the basis for the BLI estimate. The coast contains four villages. Most people work as farmers and fishermen. The main plantation products are coconut for copra, cacao, and coffee. The conservation concern relates to logging (BLI 2008g, pp. 1–2).

Natural History

Behavior. The salmon-crested cockatoo is most active in early morning and late afternoon (Juniper & Parr 1998, p. 281; Metz *et al.* 2007, p. 36), calling loudly when leaving and returning to roost. The cockatoo's call is a wailing cry, which can be heard from a distance of 1 km (0.6 mi), and roosts can easily be located due to the noise. The species is shy and flies off when disturbed. Birds move slowly through the canopy in the early morning and are usually not seen or heard during the heat of the day. They are found in groups of up to 16 birds, although the size of non-breeding flocks appear to have been dramatically reduced due to the recent population decline (Juniper & Parr 1998, p. 281). They fly using a few rapid wing beats, followed by gliding, and then a few more wing beats (Forshaw 1989, p. 141; Juniper & Parr 1998, p. 281).

Food. This species feeds on fruit of the kenari tree (*Canarium commune, C. vulgare*, and *C. indicum*) (Metz *et al.* 2007, p. 37), nuts, seeds, berries, and insects (Forshaw 1989, p. 141; Juniper & Parr 1998, p. 281). Their abundance is positively related to the density of strangling figs, a potentially important food resource (Kinnaird *et al.* 2003, p. 233). Research by O'Brien *et al.* (1998, p. 668) showed that figs may be a keystone plant resource for many fruit-eating birds. On the average, figs contain calcium levels 3.2 times higher than other fruits, promoting eggshell deposition and bone growth. Salmon-crested cockatoos are suspected of taking *Pandanus* spp. fruits (Bishop in prep., as cited in BLI 2001, p. 1665). They pick larvae from fallen, rotting tree trunks (Metz *et al.* 2007, p. 37). They also eat young coconuts (*Cocos nucifera*) by chewing through the tough outer covering to get at the pulp and water inside (Forshaw 1989, p. 141; Juniper & Parr 1998, p. 281; Wallace 1864, p. 279). In general, island cockatoos are thought to need to exploit all the available food in order to maintain a healthy population because islands typically contain fewer plant species and the quantity of food is restricted by an islands' relatively small size (Cameron 2007, p. 83).

Breeding. Its favored nest tree is *Octomeles sumatranus* (Kinnaird *et al.* 2003, p. 230). During times of nest building, brooding, and fledging, birds stay close to the nest tree (Metz *et al.* 2007, p. 36). Courtship display can last up to 20 minutes, with the male and female perched in the top of an emergent or dead forest tree, raising and lowering their crests, fanning their large face and neck feathers forward to increase the size of the head (Cameron 2007, p. 57), calling loudly, breaking twigs, and making short, weak, fluttering flights. The nest is a high hole in a mature tree (Juniper & Parr 1998, p. 281). The salmon-crested cockatoo removes the bark immediately surrounding the entrance to help prevent predators, such as snakes or monitor lizards, from gaining access to the eggs or chicks, and may also clear the surrounding foliage perhaps to have a better view for the brooding hen. The nest site is fiercely guarded from competitors, such as the Eclectus parrot (*Eclectus roratus*) (Metz *et al.* 2007, p. 37).

Little is known about seasonality and breeding biology of the salmon-crested cockatoo in the wild (Kinnaird *et al.* 2003, p. 228), or other demographic information, such as reproductive effort and success and age-specific mortality rates—information that is important to determine where the primary weak points in the life equation lie (Snyder *et al.* 2000, p. 9). The cockatoo is thought to breed between July and August or September, and probably a second time at the beginning of the year (Metz & Zimmermann n.d., p. 1). Stresemann (1914, p. 86) observed a pair in a nesting cavity about 25 m (82 ft) up the truck of a living tree in early May. The cockatoo lines the cavity with wood chips, and usually lays two white eggs, although only one is raised (Metz & Zimmermann n.d., p. 1). Both parents help to incubate the eggs during the 28–day incubation period. Young birds take 4–5 years to reach maturity (Juniper & Parr 1998, p. 281).

Population Estimates

Seram—historical population estimates. Historically, there are few quantitative observations of this species in the wild. In 1864, Wallace (1864, p. 279) described the salmon-crested cockatoo as ''abundant'' on Seram. In 1911, Stresemann (1914, p. 86) reported that the species was fairly common in coastal regions. The species was regarded as locally common in 1970 (Juniper & Parr 1998, p. 281). During 1980 and 1981 (Forshaw 1989, p. 141), Smiet (1985, p. 189) observed that this species was locally common in primary forests up to 900 m (2,952 ft) in the interior and in undisturbed forests, where 10 to 16 birds were seen congregating in roosting trees. He did not see any birds on the western part of the island, although the cockatoo was said to be common there until about 1970. In 1980, small flocks were observed in the south of the island (White & Bruce 1986, p. 212), and cockatoos were frequently seen throughout Manusela National Park below 900 m, except in the southern part of the Mual Plains in the center of the park where they were not common (Smiet & Siallagan 1981, p. 9). In September 1983, Bishop (1992, p. 2) observed four cockatoos in secondary woodland in southwest Seram.

Rangers at the Manusela National Park commented on a dramatic decline in the species in the mid-1980s (Collar & Andrew 1988, p. 69). By 1987, it was the rarest parrot in Manusela National Park (Bishop 1992, p. 2). Due to the international pet trade, Bishop considered the species to be endangered and in need of critical management to avoid imminent extinction (Bishop 1992, p. 1). Between July 20 and September 25, 1987, an Operation Raleigh team found the species to be ''very scarce and absent from large tracts of suitable habitat'' in Manusela National Park (Bowler 1988, p. 6). During 40 days of field work, they made 54 sightings, resulting in a maximum of 20 individual birds in prime habitat. In addition, birds were observed either singly or in pairs, never in flocks. Encounter rates were the lowest of any parrot species at 0.3 birds per hour in lowland rain forests around Solea at about 100 m (328 ft) and 0.1 per hour in the Kineka area at 600–900 m (1,968–2,952 ft) (Bowler 1988, p. 6; Bowler & Taylor 1989, p. 17). Marsden (1992, pp. 11–12) suggested that the densities of cockatoos, which Bowler and Taylor found in the Manusela National Park enclave, may be naturally low because the forest has been heavily disturbed and the area is at the upper end of the species' altitudinal range. He found it difficult to relate Bowler and Taylor's low figures for lowland forests around Solea to what he found in 1989 (see below). BLI also questioned the validity of the numbers, because Bowler and Taylor are now judged to have worked mainly at higher elevations in Manusela (BLI 2001, pp. 1664, 1668). Metz (1998, p. 10) suggested that the stronghold of this cockatoo is likely on Seram, almost exclusively outside of the borders of the national park.

During 5 weeks from December 19, 1989, Marsden (1992, pp. 7–8; Marsden 1998, p. 606) collected field data in Manusela National Park and in lowland habitats in central and northeast Seram, using the variable circular plot method to estimate densities of the salmon-crested cockatoo. Encounter rates were 1.0 bird per hour in primary forests, 2.5 birds in disturbed primary forests, and 0.4 birds in secondary and in recently logged forests. While cockatoo densities were similar in primary (9.1 birds per 1 km^2 (0.386 mi^2)) and disturbed primary forests (9.8 birds), densities were lower in secondary forests (6.4 birds), and much lower in recently logged forests (1.9 birds), suggesting that large-scale logging might adversely affect the species' population.

Between July and September 1996, the *Wai Bula '96* (a conservation expedition from Cambridge University and Universitas Pattimura, Ambon) found the salmon-crested cockatoo to be widely dispersed in northeast Seram in the Wae Fufa Valley (primary lowland and lower montane evergreen forests) and in degraded coastal forests near Hoti (coastal secondary lowland forests), where pairs and small flocks were a common sight. They suggested that the bulk of the population probably occurs in eastern Seram (Isherwood *et al.* 1998, p. 18). Juniper & Parr (1998, p. 281) reported that the world population was ''thought still to be above 8,000.''

Seram—recent population estimates. The most recent research (Kinnaird *et al.* 2003, p. 232) estimated the total salmon-crested cockatoo population to be 110,385 birds (with confidence limits of a minimum 62,416 and a maximum of 195,242). Based on the research assumptions (see below), we agree with BLI (2001, p. 1664) that ''...the figure of 62,400 is chosen as the appropriate population figure.''

These numbers were generated by joint population surveys conducted by the Wildlife Conservation Society Indonesia Program, BLI Indonesia Program, and Pelastarian Hutan Dan Konservasi Alam, Ministry of Forestry, Government of Indonesia in May–September 1998. Cockatoo censuses were conducted at seven sites in western and central Seram using line-transect methods (Kinnaird *et al.* 2003, pp. 228, 230, 234). Five of the sites were considered primary lowland forest and two had been previously logged or were disturbed by humans (Kinnaird *et al.* 2003, p. 228). Cockatoos were observed at all sites as single individuals or pairs. Estimates of density varied widely among locations, ranging from 0.93 birds per 1 km^2 (0.386 mi^2) at Kawa to 17.25 birds per 1 km^2 at Roho. The mean density was 7.87 birds per 1 km^2, which was considered indicative of all sites because it included estimates from primary and logged forests. The researchers were unable to complete the census before the outbreak of civil war; thus, data from the western part of Seram were used to estimate the number of cockatoos on all of Seram.

The estimated population was generated by working with GIS-based estimates of lowland forest habitat on Seram (14,026 km^2 (5,414.2 mi^2)) below 600 m (1,968 ft) and assuming that all lowland forests provide adequate habitat for cockatoos and that densities remain constant across the island (Kinnaird *et al.* 2003, p. 232). Because these assumptions are unlikely, Kinnaird (2000, p. 15) explained the scenarios considered by the researchers. Cockatoos are fairly tolerant of degraded habitat, but they still need nesting trees and have a preference for areas with lots of large strangling figs. So, the first scenario looked at involved the number and extent of logging concessions operating on Seram during the 10–year-period from 1989–1999, which resulted in a reduction of 1,200 km^2 (463 mi^2) of lowland forest habitat for cockatoos.

The population estimate still hovered between 90,000 and 100,000 birds. The second scenario looked at continued logging and habitat loss during the next decade, projecting that the population size would decline by another 10 percent. These estimates may have underestimated cockatoo population size because many logging concessions are not working at full capacity. On the other hand, the estimates ignored additional losses due to the capturing of birds for the pet trade. The population estimate also ignored the variability in how logging companies harvest their concessions (i.e., greater or less than the legal maximum intensity). If logging concessions harvest timber in a conventional manner of up to 1,000 hectare (ha) (2,470 acre (ac)) per year, Kinnaird *et al.* (2008, p. 233) assumed that cockatoos will persist but at possibly lower densities.

In 1985, Smiet (1985, pp. 193–194) suggested that the relative resilience of most Moluccan parrots under trade pressure and habitat destruction can be attributed to a combination of factors, including: (1) A great reproductive capacity (especially in the smaller species); (2) adaptability to habitat alteration (which tends to provide a relative abundance of flowering and fruiting plants); (3) persistence of some original, undisturbed habitat; and (4) island isolation and lack of predators, parasites, and competitive species. Metz (2005, p. 34), however, cautioned that the current population estimate should not be a ''cause for complacency.'' He suggested that the number of birds capable of breeding, or the breeding success rate, might be low for this species since: they have a long life span, and many birds might be past breeding age; there is a very high poaching pressure and trappers mostly take adult birds, which depletes the number of breeding birds; and the salmon-crested cockatoo has a slow reproductive cycle and unknown, but possibly low, fledging success rate. These opinions point out the need for further research on this species to better understand its population size and its ability to adapt to the habitat destruction and trade that is occurring on Seram.

Ambon. Very small numbers of salmon-crested cockatoos are thought to occur in remaining natural forests in the more remote regions of Ambon (Poulsen & Jepson 1996, p. 160). While Smiet (1985, p. 189) lived on the island from 1980 to 1981, he did not see the species there; however, he wrote that the species was said to be common on Ambon until about 10 years ago. In 1992, Marsden (1992, pp. 12–13) reported seeing eight salmon-crested cockatoos and three unidentified cockatoos during brief searches of remaining forest patches on Ambon. He suggested that most free flying salmon-crested cockatoos on Ambon may be wild birds, either resident and possibly breeding or visiting birds from Seram. Local people told him that cockatoos were still present in the area, but rare in other forested areas on the island. Poulsen and Jepson (1996, pp. 159–160) confirmed that wild populations of salmon-crested cockatoos occur on Ambon. On May 28 and June 11, 1995, they observed six to eight cockatoos, in forested hills behind Hila on the north coast of the Hitu Peninsula, overlooking a forested valley at about 300 m (984 ft) and in forest edge around shifting cultivation at about 500 m (1,640 ft).

Conservation Status

The salmon-crested cockatoo is protected from capture and trade under Indonesian laws (Republic of Indonesia Law No. 5, 1990, and Law No. 7, 1999) (Kinnaird 2000, p. 14; Kinnaird *et al.* 2003, p. 228). Intentional violations may lead to imprisonment of up to 5 years and fines up to 100 million IDR (Indonesian rupiah) (which amounts to approximately 10,000 USD (U.S. dollar)). Negligent violations may lead to imprisonment of up to 1 year and fines up to 50 million IDR (5,000 USD). The government may seize and confiscate specimens of protected animals. The Department of Forest Protection and Nature Conservation is responsible for implementing the law, and the Natural Resources Conservation Agency, working with police, Customs, and other enforcement agencies, is responsible for enforcing the law (Shepherd *et al.* 2004, p. 4).

The species is listed on the IUCN (International Union for Conservation of Nature) Red List as 'Vulnerable' because it has suffered a rapid population decline as a result of trapping for the pet bird trade and because of deforestation in its small range. BLI (2004, p. 1) projects that the decline will continue and perhaps accelerate. Current populations are estimated at 62,400 individuals (Kinnaird *et al.* 2003, p. 232), with a decreasing population trend; the decline for the past and the future 10 years or 3 generations is estimated at 30 to 49 percent (BLI 2008b, p. 1). The current trend is justified by the suspected rapid decline of the species due to ongoing and prolific capture for the domestic pet trade (BLI 2008b, p. 2). Ongoing threats are habitat loss and degradation due to selective logging and clear-cutting, agriculture, infrastructure development (settlement and hydroelectric projects), and harvesting (hunting and gathering for the domestic and international pet trade) (BLI 2004, pp. 1–2).

The cockatoo is also protected by CITES, one of the most important means of controlling international trade in wild animals and plants. CITES is an international agreement where countries work together to ensure that international trade in CITES-listed animals and plants is not detrimental to the survival of wild populations by regulating import, export, and re-export. Although almost all Psittaciformes species were included in CITES Appendix II in 1981 (CITES 2008a, p. 1), the salmon-crested cockatoo was transferred to CITES Appendix I effective January 18, 1990, because populations were declining rapidly due to uncontrolled trapping for the pet bird trade (CITES 1989a, pp. 1–7). An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species requires the issuance of both an import and export permit. Import permits are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species (CITES Article III(2)). The United States and Indonesia, along with 173 other countries, are members to CITES (CITES 2009, p. 1).

The import of salmon-crested cockatoos into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that all trade involving the United States is sustainable and is not detrimental to the species. Permits may be issued to allow import of listed birds for scientific research, zoological breeding or display, or personal pet purposes when certain criteria are met. The Service may approve cooperative breeding programs and subsequent import permits under such programs. Wild-caught birds may be imported into the United States if they are subject to Service-approved management plans for sustainable use. At this time, the salmon-crested cockatoo is not part of a Service-approved cooperative breeding program and does not have an approved

management plan for wild-caught birds (FWS 2008, p. 1).

The IUCN *Status Survey and Conservation Action Plan 2000–2004 for Parrots* (Snyder *et al.* 2000, p. 66) identified a need to clarify the status of the salmon-crested cockatoo in the wild, including: (1) determining the species' relative abundance in each habitat type and (2) collecting information on the size and distribution of habitat types, trapping, timber extraction, and breeding success of cockatoos in primary and secondary forests because it is unknown if the salmon-crested cockatoo will survive in degraded secondary forests in the long term. At present, inadequate information on the species, its habitat, and the effects of human activities on the species makes it difficult to make recommendations on regional development, such as reserve boundaries, land-use zoning, and possible new provincial forestry and agriculture policies, to ensure the species' survival. The information would also provide a baseline for monitoring and determining the degree to which trade affects the status of this species (Snyder *et al.* 2000, pp. 66, 69).

Species Information and Factors Affecting the Salmon-crested Cockatoo

Under section 4(a) of the Act (16 U.S.C. 1533(a)(1)) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424), we may list a species as threatened and endangered on the basis of five factors. The five factors are: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Below is the Service's five-factor analysis for the salmon-crested cockatoo.

Foreseeable Future

Although section 3 of the Act uses the term ''foreseeable future'' in the definition of a threatened species, it does not define the term. For purpose of this proposed rule, we defined ''foreseeable future'' to be the extent to which, given the amount and quality of available data, we can anticipate events or effects, or extrapolate trends of a threat, such that reliable predictions can be made concerning the future of the species. In the analysis of the five factors below, we consider and describe how the foreseeable future relates to the status of the salmon-crested cockatoo in view of population trends and threats to the species.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The lowland forest habitat of the salmon-crested cockatoo is being impacted by logging (including the failure to use wise logging practices during selective logging), illegal logging, conversion of forests to agriculture and plantations, transmigration of people, oil exploration, and infrastructure development.

Logging. Commercial timber extraction is listed by the IUCN Red List to be a continuing major threat to the salmon-crested cockatoo, with a medium impact and a slow decline of the species (BLI 2008b, p. 3). Research that looked at species-area relationship suggested that deforestation affects endemic bird species restricted to single islands most severely (Brooks *et al.* 1997, p. 392).

In Indonesia as a whole, between 2000 and 2005, forest cover declined by more than 90,000 km^2 (34,740 mi^2). Lowland areas, which offer important habitat for Indonesia's cockatoos, have been the most severely impacted (Cameron 2007, p. 177; Rhee *et al.* 2004, chap. 1 p. 2). On the islands of Sumatra and Kalimantan (Indonesian islands to the far west of Seram), the World Bank predicted that all lowland rain forests outside of protected areas would be degraded by 2005 and 2010, respectively (Rhee *et al.* 2004, p. xviii). In many areas of Indonesia, most commercially valuable forests have already been logged. Thus, major commercial logging enterprises are now focused on islands in Maluku Province, including Seram (BLI 2008k, p. 6; Smiet 1985, p. 181).

The impact of logging has steadily increased on Seram, with logging becoming more intense during the 1990s (BLI 2008k, p. 6). Deforestation in some areas has been extensive through selective logging of *Shorea* spp. (Ellen 1993, p. 201), such that by 2001, about a fifth of the original forest cover had been cleared (Morrison 2001, p. 1), with most of the coastal areas converted to grassland, agriculture, plantations, or scrub (Marsden 1992, p. 7). Although large areas of contiguous, intact forests remain (Morrison 2001, p. 1), 50 percent of forest, which are spread over the island, are under logging concessions. The north dipterocarp forests are still dominated by the endemic *Shorea selanica*, a tree especially vulnerable to logging as it grows tall and straight and is much favored by Western and Japanese markets (Edwards 1993, p. 9). Once the primary forest is logged, experience on nearby Indonesian islands shows that secondary forest is generally converted to other uses or logged again rather than being allowed to return to primary forest (Barr 2001, pp. 64, 67; Grimmett & Sumarauw 2000, p. 8; Jepson *et al.* 2001, p. 859).

Selective logging is the primary technique for the extraction of timber in Indonesia (BLI 2008k, p. 6). In selective logging, the most valuable trees from a forest are commercially extracted (Johns 1988, p. 31), and the forest is left to regenerate naturally or usually with some management until subsequently logged again. Johns (1988, p. 31), looking at a West Malaysian dipterocarp forest, found that mechanized selective logging in tropical rain forests, which usually removes a small percent of timber trees, causes severe incidental damage. The extraction of 3.3 percent of trees destroyed 50.9 percent of the forest. He concluded that this type of logging reduced the availability of food sources for frugivores (fruit-eaters). Edwards (1993, p. 9) observed a similar problem on Seram. Timber companies, operating under a selective logging system, caused considerable damage to the surrounding forest, both to trees and soil. Forests selectively logged 15 years before had an open structure with skeletons of incidentally killed trees, serious gulley erosion, and vegetation on waterlogged sites that had been compacted by heavy vehicles. Also, commercial logging uses a network of roads, which can lead to secondary problems (BLI 2008k, p. 6), such as providing access to trappers of parrots.

Since selective logging targets mature trees, it can have a disproportionate impact on hole-nesters, such as cockatoos, because fewer nest sites remain (BLI 2008k, p. 6). Also, unsustainable logging practices that destroy the forest canopy reduce habitat available to the salmon-crested cockatoo. Kinnaird *et al.* (2003, pp. 233–234) found that the abundance of cockatoos was positively related to the density of its favored nest tree, *Octomeles sumatranus*, and strangling figs, a potentially important food resource. These trees would be impacted by logging, emphasizing the need to implement wise logging practices, such as those based on reduced-impact logging techniques. However, these techniques, which are recommended under Indonesia's selective logging system, are seldom applied because of the lack of control over harvesting practices, limited

understanding of how to implement the measures, and high financial costs (Sist *et al.* 1998, p. 1). Specifically, the pre- and post-logging inventories are not conducted properly or are not reported truthfully; over-cutting above the annual plan occurs; frequent cutting outside approved boundaries occurs; re-logging is more frequent than recommended; and supervision by the Ministry of Forestry has been ineffective (Thompson 1996, p. 9).

The salmon-crested cockatoo is dependent on little-disturbed lowland forests. In a field study conducted from December 19, 1989, for 5 weeks, Marsden (1992, pp. 7–13) looked at the distribution, abundance, and habitat preferences of the salmon-crested cockatoo on Seram. Results suggested that while cockatoo densities were similar in primary and disturbed primary forests, densities were lower in secondary forests, and much lower in recently logged forests (Marsden 1992, p. 9). In total, 84 cockatoos were recorded at 132 stations, either singly or in pairs, on 34 occasions. Groups of more than 4 birds were recorded 3 times, with the maximum group size of 10. Although cockatoos were found at different densities in different land-use types, more cockatoos were present where habitat alterations occurred on a small scale. Cockatoos tended to be recorded in mature, open-canopied lowland forests with some very large, tall trees and some low vegetation. Most significantly, Marsden found that there may have been a reduction of the cockatoo population by about 700 birds for each 100 km^2 (86 mi^2) of Seram's primary forests that had been selectively logged in the last 6 years. Similarly, the conversion of 100 km^2 of locally disturbed secondary forests to plantation could result in the loss of around 600 birds (Marsden 1992, p. 12).

Marsden (1998, pp. 605–611) also looked at changes in bird abundance following selective logging on Seram. Field work was conducted in forested areas in the central and northeast parts of the island. Logged forests usually had sparser canopy and mid-level vegetation cover and denser ground cover than unlogged forests (Marsden 1998, pp. 605, 607–608). Using a point count method to estimate population densities, Marsden (1998, p. 608; 1999, p. 380) found that salmon-crested cockatoo density estimates in unlogged forests below 300 m (984 ft) were more than double those in logged forests. Because the cockatoo is caught for the pet trade, Marsden was unable to separate the effects of habitat change, such as loss of nest holes, from possible effects of logging on capture rates (for example, increased accessibility to trappers) (Marsden 1998, p. 610). Although Kinnaird *et al.* (2003, p. 233) found the highest cockatoo densities in primary forest habitat with good structure and lower densities in logged or disturbed sites, they did not find a statistically significant difference in cockatoo densities between logged and unlogged forests. They surmised this may have been because of the intensity of logging or, more likely, reflected the mosaic of habitat types found within their sampling sites. They speculated that there is a continuum of cockatoo densities in logged forests depending on the intensity of logging and access provided to trappers.

Logging concessions are spread over the island, except there are no concessions in Gunung Sahuai Nature Reserve and only 15 percent of Manusela National Park is under concessions (Kinnaird *et al.* 2003, p. 231). About half the island (8,271 km^2 (3,193 mi^2)) is held within logging concessions, with more than 75 percent within lowland habitat favored by the salmon-crested cockatoo (Kinnaird *et al.* 2003, pp. 227, 233). This means that less than 30 percent of the island's lowland forests (5,096 km^2 (1,967 mi^2)) is unoccupied by logging concessions. In 1998, Kinnaird *et al.* (2003, pp. 233–234) were unable to find out the area of land scheduled for logging. However, Kinnaird (2000, p. 15) was able to obtain information from the Ministry of Forestry that showed 12 logging concessions have been operating on Seram during the 10–year period from 1989–1999. If the concessions have been logged at a maximum intensity of 10 km^2 (3.86 mi^2)/year/concession and that logging was conducted in a conventional manner that results in 70 percent damage to the canopy, lowland forest habitat for cockatoos would be reduced by 1,200 km^2 (463 mi^2), or 8.5 percent, in 10 years. The researcher concluded in 2000 that overall the loss of habitat has not reached a level where it is perceived as a serious threat to cockatoos. However, the cockatoo remains under threat (Kinnaird 2000, p. 15). We have no reason to believe that the effects of logging on the species will be ameliorated in the foreseeable future, but may increase because commercial logging enterprises are now focused on the Moluku Province, including Seram.

The researchers were forced to leave the island because of civil unrest. They suggested that the pressure for land conversion will accelerate dramatically once social and economic stability returns to Seram, especially in the lowlands, and this will be made worse by the 1999 regional autonomy laws that allow for local authorities to determine licensing of forest concessions and exploitation of natural resources. They concluded that the proper management of Seram's logging concessions would determine the future of the salmon-crested cockatoo (Kinnaird *et al.* 2003, p. 234).

Approximately 14 percent of Seram's forests (or 11.5 percent of lowland forests) are protected in Manusela National Park (2,216.4 km^2 (855.5 mi^2)) and Gunung Sahuwai Nature Reserve (118.9 km^2 (45.9 mi^2)). In Manusela National Park, 15 percent of the forest is within logging concessions. In 1981, Smiet and Siallagan (1981, pp. 11–12, 22) reported that large patches of forest in the coastal region of the Mual Plains had been disturbed by logging activities—forests along the southeastern boundary of the park had been cleared up to 400 m (1,312 ft) and planted with clove and coconut plantations. They advocated the development of a buffer zone between the park and the densely populated coastal area because more and more forests at increasing altitudes were being cleared. Kinnaird *et al.* (2003, p. 233) estimated that the protected areas in Seram provide habitat for a minimum of 7,300 salmon-crested cockatoos based on density estimates derived from their surveys. However, logging has recently occurred inside Manusela National Park, and, once logging has concluded, there are pressures to change the land use to agriculture or plantations (BLI 2008k, p. 7). Kinnaird *et al.* (2003, p. 233) also estimated that the proposed Wai Bula nature reserve, 561.8 km^2 (216.9 mi^2) of lowland forests located in the northeastern part of Seram, provides habitat for a minimum of 2,500 cockatoos. We believe that this population estimate, which is based on the availability of suitable habitat, may be an overestimate because the Wai Bula area is currently not protected (it was proposed as a nature reserve in 1981 and the probability of it being officially designed is now low) and 93 percent of the area is under logging concessions.

Illegal logging. Illegal logging is considered to be a leading cause of forest degradation in Indonesia (Rhee *et al.* 2004, chap. 6 p. 7). It is pervasive, and the Indonesian government has been unable to enforce its own forest boundaries (Barr 2001, p. 40). Illegal logging includes overharvesting beyond legal and sustainable quotas, harvesting of trees from steep slopes and riparian habitat, timber harvesting and land encroachment in conservation areas and protection forests, and falsification of documents. Overexploitation of the forests and illegal logging are driven by

the wood-processing industry, which consumes at least six times the officially allowed harvest (Rhee *et al.* 2004, pp. xvii, chap. 6 p. 8). Illegal logging in the national parks also is reported with regularity, and the persons involved are armed and ruthless (Whitten *et al.* 2001, p. 2).

Although the Indonesian government issued Presidential Instruction No. 4/2005 to eradicate illegal logging in forest areas and distribution throughout Indonesia (see Factor C) (FAOLEX 2009, p. 1), illegal logging continues. The Center for International Forestry Research estimated that between 55 and 75 percent of logging in Indonesia is illegal (U.S. Agency for International Development (USAID) 2004, p. 1). Contributing factors include poor forest governance, rapid decentralization of government, abuse of local political powers, complicity of the military and police in some parts of the country, inconsistent enforcement of the law, and dwindling power of the central government (USAID 2004, pp. 3, 9). Jepson *et al.* (2001, pp. 859–861) found illegal logging crews operating freely in December 2000 in protected areas and forest concessions in Sumatra and Kalimantan, Indonesia. Local government officials were in collusion with illegal loggers by turning a blind eye to the practice or providing permits for timber transport. Some government officials, who wanted to stop illegal logging, faced serious intimidation. Jepson *et al.* concluded that illegal logging was becoming semi-legal and the de facto arrangement for governing Indonesia's forests.

Conversion of forests to agriculture and plantations. Indonesia is a rapidly developing country with a projected population of 235 million by 2015 (Snyder *et al.* 2000, p. 59). A growing population on Seram has converted forest into cultivated land, with human settlements and plantations typically located in lowland coastal areas (Smiet 1985, pp. 181, 183). Based on data from landsat images from late 1989 and early 1990 (Kinnaird *et al.* 2003, p. 230), land use in Seram is as follows: 4.6 percent in agriculture, 0.1 percent in plantations, and 0.1 percent in settlements (see Table 1 below). Although these percentages are low, forests continue to be converted for agriculture and plantations.

Near the coast, forests have been replaced with plantations of coconut, oil palm, and spices. Inland, forests on rich alluvial soil, once timbered, are liable to be converted to agricultural fields. Part of the Indonesian government's long-term planning strategy is to develop more efficient agriculture through improved and appropriate techniques to help alleviate poverty. If the plan is carefully implemented, improved agricultural techniques could reduce pressure on areas of natural habitat (BLI 2008k, pp. 7–8). However, Snyder *et al.* (2000, p. 66) cautioned that, since most of Seram's forests are under timber concessions, the island's development priority could mean that forests over good soil may be converted to wet rice cultivation and other crops. The salmon-crested cockatoo is unable to exist in this type of habitat (Snyder *et al.* 2000, p. 66).

Approximately 6,220 km² (2,401 mi²) of Seram's lowland forest is slated for conversion to agriculture or plantations (45 percent within logging concessions). By 2028, most of this land will probably be converted to these uses that provide no habitat for cockatoos, resulting in habitat loss for at least 31,000 cockatoos and reducing the total island population to around 30,400 individuals (Kinnaird *et al.* 2003, p. 233).

Transmigration. Indonesia has long had a policy to resettle people, mainly from Java, to develop the less populated regions of the country, with the Maluku Province being a major destination (BLI 2008k, p. 8). From 1969–1989, some 730,000 families were relocated in Indonesia (Library of Congress 1992, p. 1). While the scale of transmigration has been reduced over the past decade, the recent unrest in Maluku led to large-scale movement of people. In some areas, these movements of people have had serious negative effects on the environment, involving land disputes with indigenous inhabitants (Library of Congress 1992, p. 1), forest clearance for agriculture, unsustainable slash-and-burn farming (BLI 2008k, p. 8), and introduction of wet rice cultivation (Ellen 1993, p. 200).

Oil exploration. In 1993, a significant oil discovery was made in eastern Seram—the Non-Bula Block, which occupies an area of about 4,572 km² (1,765 mi²). Development was delayed until 2002 (Lion Energy Limited 2009, p. 2). The average output from the main oil field in the first half of 2006 was 4,300 barrels per day (Entrepreneur 2009, p. 1). The main field in the Seram Non-Bula Block is the Oseil Field. The gross oil reserves in that field have been estimated to be about 39 million barrels—7 million barrels of proven reserves, 6 million barrels of probable reserves, and 26 million barrels of possible reserves (International Business Times 2009, p. 1). In 2008, oil was discovered in a new well, which lies 4 km (2.5 mi) from the Oseil Field. The investment firm is currently petitioning the Indonesian government to begin production and export operations from the new field (E&P Magazine 2008, p. 1). Generally, oil development areas cover large tracts of land, but the area occupied by permanent facilities including pipelines and refineries are relatively small. However, oil development can have significant negative impacts on nearby habitat through construction of roads and other buildings, discharge of refineries, and oil spills and leaks (Rhee *et al.* 2004, chap. 6 p. 31).

Infrastructure development. Seram is remote, with no airport and only rudimentary ground transportation (Morrison 2001, p. 5). An essential part of regional development is the improvement of roads. However, new roads can cause serious environmental problems (BLI 2008k, p. 8), as shown by the Trans-Seram Highway, which threatens forest habitat by illegal logging, land clearance, and soil erosion (Morrison 2001, p. 5). The excavation of sand for local road construction has affected some habitat on Seram. Previous proposals for a large cement factory, with a quarry and hydroelectric dam, close to Manusela National Park appear to have been abandoned (BLI 2008k, p. 8).

Summary of Factor A

The salmon-crested cockatoo resides in lowland forests predominately between 100–600 m (328–1,968 ft) throughout the island, with the highest densities of birds occurring in little-disturbed forests. Logging and illegal logging are primary threats to the habitat of this species, with the threats occurring throughout the island in lowland forests.

Cockatoos are highly impacted by selective logging of primary forests. Selective logging, which targets mature trees, has a negative impact on hole-nesters, such as the salmon-crested cockatoo. Research found that the abundance of cockatoos was positively related to the density of its favored nest tree and strangling figs, trees that would be impacted by logging, especially since reduced-impact logging techniques are seldom applied.

Research also found that for every 100 km² (38.6 mi²) of Seram's primary forests that were selectively logged in the last 6 years, 700 birds were likely lost from the cockatoo population. Similarly, for every 100 km² of locally disturbed secondary forest that were converted to plantations, 600 birds were likely lost from the cockatoo population. The cockatoo's density estimates in logged forests below 300 m (984 ft) were more than half those in unlogged forests, although researchers were

unable to separate the effects of habitat change from the possible effects of logging on trapping rates (see Factor B).

Once the primary forest is logged, experience on other nearby Indonesian islands shows that the secondary forest is generally converted to other uses or logged again rather than being allowed to return to primary forest. Therefore, although cockatoos may continue to inhabit secondary forests on Seram, the population will be at a substantially lower number. The trend of high loss of primary forests and degradation of secondary forests is of concern because little is known about the reproductive ecology of the salmon-crested cockatoo in the wild, including breeding success in mature forests versus secondary forests, and whether the cockatoo will survive in degraded forests in the long term. Also, the size of groups of cockatoos observed was drastically smaller in research conducted in 1998, where 75 percent of birds were observed as single individuals and 22 percent in pairs, compared to earlier reports, where groups of up to 16 birds were seen.

By 2001, approximately 20 percent of the original forest cover on Seram had been cleared. About 50 percent of the island's forests were held under logging concessions, with more than 75 percent within the salmon-crested cockatoo's favored lowland habitat. Based on information from the Ministry of Forestry in Indonesia, researchers estimated that the cockatoo lost 1,200 km^2 (463 mi^2), or 8.5 percent, of habitat between 1989 and 1999 due to logging. Although we have no information on the current status of logging concessions or actual logging (legal and illegal) activity on Seram since 1999, we anticipate that the rate of loss of cockatoo habitat due to logging will continue at the 1989-1999 level or increase because commercial logging enterprises are now focused on Seram. We have no information that indicates that this trend will be reversed in the foreseeable future.

In addition, approximately 44 percent of Seram's lowland forests (6,220 km^2 (2,401 mi^2)) is designated as conversion forest, of which 45 percent is within logging concessions. It is predicted that by 2028 up to 50 percent of the current population (at least 31,000 cockatoos) may be lost as a result of conversion of forests to agriculture and plantations, which provide no habitat to the cockatoo.

Approximately 11.7 percent of Seram's lowland forests are protected in Manusela National Park and Gunung Sahuwai Nature Reserve. Researchers estimated that these protected areas could provide habitat for up to 7,300 salmon-crested cockatoos. However, about 15 percent of the national park is under logging concessions and illegal logging has been occurring. Once the land is logged, the land use is often changed to agriculture.

The resettlement of people on Seram has had negative effects on the environment and the habitat of the salmon-crested cockatoo. These negative effects include forest clearance for agriculture, unsustainable slash-and-burn farming, and introduction of wet rice cultivation. The relatively recent development of oil production on Seram most likely has adversely affected the cockatoo's habitat. Potential development of such a large part of Seram (the current Non-Bula Block occupies one-quarter of the island) is a concern because at one time the salmon-crested cockatoo appeared to be mostly distributed in the eastern part of the island. Although we do not know what forest habitat has been destroyed, we do know that oil development on Seram will have a negative impact on nearby habitat through road building and other construction, discharge of refineries, and oil spills and leaks. Further, an essential part of regional development is infrastructure development, primarily the improvement of roads, which leads to illegal logging and land clearance, as well as facilitates bird trapping.

In summary, extensive logging and conversion of lowland forests to agriculture and plantations, combined with transmigratory human resettlement, oil exploration, and infrastructure development, are likely to destroy much of the lowland rain forests of Seram, the salmon-crested cockatoo's habitat by 2025. Therefore, we find that habitat destruction is a threat to the continued existence of this species throughout all of its range in the foreseeable future.

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

The salmon-crested cockatoo is a very popular pet bird. In the 1980s, it suffered a rapid population decline due to trapping largely for international trade. Below we analyze the impact of international and domestic trade and other uses for recreational, scientific, or educational purposes. We also consider and describe programs on Seram to support the conservation of the cockatoo—the release of confiscated cockatoos and local involvement.

International and domestic commercial trade. International wildlife trade is big business and has been identified as contributing to the decline of a number of bird species, including the salmon-crested cockatoo (BLI 2008h, p. 1). The majority of wild-caught birds in international trade are sold as pets (Thomsen *et al*. 1992, p. 5). In addition, in Indonesia, pet birds, particularly parrots, are an important part of the culture, creating a massive demand for parrots internationally and domestically (BLI 2008k, p. 10). In a survey of bird-keeping among households in five major Indonesian cities, Jepson and Ladle (2005, pp. 442–448) found that as many as 2.5 million birds are kept in the five cities. Of these, 60,230 wild-caught native parrots were kept by 51,000 households, and 50,590 wild-caught native parrots were acquired each year (changed hands, not an indication of birds taken from the wild each year). The researchers concluded that the level of bird-keeping among urban Indonesians calls for a conservation intervention.

Parrots have been traded for hundreds of years by people living in the Moluccas. Heinroth (1902, p. 120) reported that at the start of the 20th century trade significantly impacted the salmon-crested cockatoo. Bowler (1988, p. 6) wrote that the salmon-crested cockatoo was severely threatened by extensive trapping for the pet bird trade in the late 1970s, with the government apparently having little control over the number of birds taken from the wild. In the 1980s, extensive trapping of the salmon-crested cockatoo was the most important factor in the species' decline (BLI 2008k, p. 10; Forshaw 1989, p. 141). Smiet reported that trade in live birds flourished on Seram. The salmon-crested cockatoo was a popular pet traded in large numbers, accounting for 15 percent of the export (Smiet 1985, pp. 181, 189). Smiet (1982, pp. 324–325) also found live cockatoos readily available in the Ambon market.

Based on the most recent CITES annual report data, 74,838 salmon-crested cockatoos were reported as exported from Indonesia between 1981 and 1990, with international imports averaging 10,482 annually (UNEP-WCMC 2009a, p. 1; 2009b, p. 3). The species was listed in CITES Appendix II in 1981, but the high volume of trade led the CITES Significant Trade Working Group to identify this species as one of particular concern (CITES 1989b, p. 121). A review of CITES annual report trade data available at the time showed that the level of international trade of live birds was having a detrimental effect on wild populations (Inskipp *et al*. 1988, pp. 185–186, 188). The trade data showed imports of live salmon-crested cockatoos continued to be high in 1986 and 1987, with the 1987 Indonesian

harvest quota being exceeded by 3,661 birds (CITES 1989a, p. 5) or 72 percent. The Indonesian government decreased the annual harvest quota from 10,250 in 1984 to 1,000 in 1989, but a CITES' document suggested that these national measures to control trade had been ineffective (CITES 1989b, p. 121). Thus, the CITES Parties voted to transfer the salmon-crested cockatoo to CITES Appendix I, effective January 18, 1990. In 1990, field work on Seram revealed a ''sharp decline in visible trade'' in the salmon-crested cockatoo, although small numbers of birds were still leaving the island (Taylor 1992, p. 14).

Although CITES annual reports are of great value in assessing levels of legal trade and trends of trade, the number of cockatoos traded is much higher than the data reflect. The numbers do not include data from countries that are not CITES Parties or CITES Parties that did not submit annual reports (Inskipp *et al.* 1988, p. viii). Also, the numbers do not include deaths of birds before export, birds illegally traded, and birds domestically traded—doubling the numbers according to Cameron (2007, p. 163). ProFauna Indonesia, an animal protection nongovernmental organization, estimated that parrot smuggling in North Maluku, Indonesia, results in approximately 40 percent mortality (5 percent during glue trapping, 10 percent during transportation, and 25 percent during holding to sell in bird markets (malnutrition, disease, and stress)) (ProFauna Indonesia 2008, p. 5). Undocumented illegal trade (international and domestic) is difficult to quantify (Pain *et al.* 2006, p. 322; Thomsen *et al.* 1992, p. 3), and a listing in Appendix I of CITES does not totally stop illegal trade (Pain *et al.* 2006, p. 328). Seizures reported to the CITES Secretariat since 1990, however, are small—1 live bird seized in Austria in 1997; 25 live birds seized in the United Arab Emirates in 1998; and 4 live birds seized in Indonesia in 1999 (John Sellar 2009, pers. comm., p. 2). Since 1999, the U.S. Fish and Wildlife Service, Office of Law Enforcement, has seized only two salmon-crested cockatoos for lack of proper permits (FWS 2009, p. 1).

While CITES reported trade markedly fell after 1989 with an average annual worldwide import of 159 cockatoos (UNEP-WCMC 2009c, p. 5), illegal hunting and trade of the salmon-crested cockatoo continue today, with high domestic consumption. Extrapolating from figures obtained during interviews with parrot trappers in 1998, an estimated 4,000 salmon-crested cockatoos are trapped each year on Seram (BLI 2008k, p. 10; Cameron 2007, p. 164), which is approximately 6.4 percent of the population (Kinnaird *et al.*, in litt., as cited in BLI 2001, p. 1666). Direct evidence of continuing illegal trade is the sighting of glue traps (Kinnaird 2000, p. 15). Poachers use glue traps by cutting a suitable perching branch out of a tree and replacing that branch with one that has been smeared with sticky glue. Then a tame decoy bird lures wild birds into the glue trap (ProFauna Indonesia 2008, p. 2). Birds are also captured using nylon fishing-line snares or by tracing adults to their nesting sites so that the young can be taken (Bowler 1988, p. 6; Juniper & Parr 1998, p. 218). Metz (2005, p. 35) described local declines in the salmon-crested cockatoo, based on statements from trappers. When cockatoos became scarce on the western part of the island in 1991–92, poachers moved to the eastern and northern parts of the island.

Even with government controls, the commercial hunting of cockatoos (i.e., hunting by people to gain at least a temporary living from the activity) is relatively common on Seram (Ellen 1993, p. 199). Field research conducted in 2003–2005 in a small village (320 people, 60 households) located in the Manusela Valley led to the conclusion that collecting wild parrots, including the salmon-crested cockatoo, is a way for villagers to supplement their income during times of hardship (Sasaoka 2008, p. 158; Sasaoka 2009, pers. comm., p. 1). Most trapping was sporadic and the number of parrots caught was low. Traps are set in fruit trees such as durian (*Durio* spp.) and breadfruit (*Artocarpus heterophyllus*) from January to May, and traps are set in resting sites at any time of the year. In 2003, 21 salmon-crested cockatoos were trapped in the research site by 3 households; in 2004, 25 cockatoos by 5 households; and in 2005, 26 cockatoos by 10 households. Villagers sometimes kept the cockatoos for several months while waiting for the best price, but normally did not keep them as pets. Trappers received 70,000–100,000 IDR (7–10 USD) for an adult cockatoo and 200,000–250,000 IDR (20–25 USD) for a baby cockatoo, selling the birds to middlemen in coastal areas (Sasaoka 2009, pers. comm., pp. 1–2). In studying the forest peoples of Seram, social anthropologists have reported that parrot catching accounts for 25 to 30 percent of forest people's cash income, and that young men among the Halafara people of the Manusela Valley catch and sell parrots to raise their bride price (S. Badcock in litt. 1997 as cited in Snyder *et al.* 2000, p. 60).

The scope of the illegal trade in the salmon-crested cockatoo is unknown. After conducting an investigation from December 2003 to May 2004, ProFauna Indonesia reported that smuggling and trade in protected birds continues despite legislation that prohibits such activities. According to the report, at least 9,600 parrots, including salmon-crested cockatoos (numbers of birds by species not given in this article), are caught on Seram and sold to bird exporters in Jakarta via Ambon each year (ProFauna 2006, p. 1). The illegal practice involved Ambon's largest bird trader and Seram's most prominent bird collector and trader (Jakarta Post 2004, p. 2). A principal broker on Seram might have 20–50 salmon-crested cockatoos at any one time (Metz & Nursahid 2004, p. 8), even though legal trapping quotas are zero. A single trapper can capture up to 16 cockatoos each month within Manusela National Park. However, finding and trapping birds have become harder, and the price paid trappers has increased (Metz 2008, pp. 2–3).

Cockatoos are taken to the coast, sold, and transported to Ambon on boats in packed cages (Juniper & Parr 1998, p. 281) in hidden compartments surrounded by legally shipped lories and lorikeets (Metz & Nursahid 2004, p. 9) or by hiding birds in thermos bottles (Metz 2005, pp. 35–36; Metz & Nursahid 2004, p. 9) or sections of bamboo (Cameron 2007, p. 164). Some birds are flown to Jakarta and may receive a police escort to the market (Metz & Nursahid 2004, p. 9). Illegally exported cockatoos are reported from Indonesian markets in Medan and Sumatra or international markets in Singapore and Bangkok (Kinnaird 2000, p. 15), or they may pass through Singapore, China, Taiwan, and Malaysia, with Thailand now a major importer (Metz n.d., p. 1). Cockatoos also may be smuggled directly out of Indonesia and sent by boat to the Philippines and Singapore, which act as distribution points for worldwide illegal trade (Cameron 2007, p. 164).

Most Indonesian towns have either a bird market or a stall selling birds within the main market (Shepherd *et al.* 2004, p. 2). Birds in Indonesian markets are most likely sold for domestic use, although some birds will go into international trade (Cameron 2007, p. 163). Metz (2007b, p. 2) estimated that 80 percent of salmon-crested cockatoos illegally traded remain in Indonesia. Some cockatoos remain as pets where they are trapped, but most are sold to homes in the cities in western Indonesia, where the salmon-crested cockatoo is a symbol of wealth and prestige (Metz n.d., p. 1). This cockatoo is still sold openly in the markets of Ambon and elsewhere in Indonesia.

Cameron (2007, p. 163) noted that in 1998, Margaret Kinnaird and co-workers saw up to 40 salmon-crested cockatoos at any time in Ambon markets. In an analysis of the pet trade in Medan, Sumatra, between 1997 and 2001, Shepherd *et al.* (2004, p. 12) concluded that the salmon-crested cockatoo was common in trade in Medan, with 71 cockatoos being recorded in the markets. Most of the birds at the Medan market were sold as live pets (Shepherd *et al.* 2004, p. 24).

Stopping illegal trade is complicated by the vast size of Indonesia's coastline, government officials with limited resources and knowledge to deal with the illegal pet trade and corruption (Metz 2007c, p. 2). ProFauna claimed that illegal traders exploited the religious conflict between Muslims and Christians in the Maluku Islands in May of 2004, flooding the markets in Jakarta with salmon-crested cockatoos. Animal activist and Chairman of the Balikpapan Orangutan Survival Foundation, Willie Smith, suggested that it would be difficult to stop the illegal trade in cockatoos because much of the smuggling was backed or carried out by the Indonesian military and because the departments responsible for protecting natural resources were hampered by conflicts of interests and a lack of willingness to take action (Jakarta Post 2004, pp. 3, 4). Until recently, the wildlife protection laws have not been vigorously enforced, but this may be changing. For example, in September 2004, National Park Officers arrested a long-term bird buyer and confiscated nine salmon-crested cockatoos. The buyer was sentenced to 2 months' jail time and given a fine (Metz n.d., p. 1).

To combat the illegal wildlife trade, Southeast Asian countries, including Indonesia, formed the Association of South East Asian Nations–Wildlife Enforcement Network (ASEAN–WEN) in 2005 to protect the region's biodiversity (Gulf Times 2008, p. 1). ASEAN uses a cooperative approach to law enforcement (Cameron 2007, p. 164). It focuses on the gathering and sharing of intelligence, capacity building, and better cooperation in anti-smuggling and Customs controls across Southeast Asia (Lin 2005, p. 192). For example in 2008, Indonesian police officers and forestry and Customs officers participated in an intensive Wildlife Crime Investigation Course to help the government tackle poaching and smuggling (Wildlife Alliance 2008, p. 2).

Assessing the effects of trade on wild populations of parrots, such as the salmon-crested cockatoo, is difficult because the threats of habitat loss and trade occur at the same time (Snyder *et al.* 2000, pp. 2, 68). The loss of habitat due to logging, conversion of forests to agriculture and plantations, increased human settlement, and infrastructure development, leads to more exposure to bird trapping. Thus, it is difficult to distinguish between the effects of habitat loss and trade on the cockatoo. In addition, little information is available on the number and age of birds being taken from the wild and when and where the birds are being trapped. For example, the trapping of large numbers of breeding-age adults from a population is apt to have a larger overall adverse impact than the removal of a similar number of juveniles (Thomsen *et al.* 1992, p. 10). Coates and Bishop (1997, pp. 39–41) reported that trapping the salmon-crested cockatoo for international and domestic markets, in combination with ongoing destruction of lowland forests, was having a major negative impact on wild populations. They concluded that, despite the protection given to the cockatoo by Manusela National Park, this cockatoo was being trapped to extinction.

Recreational, scientific, or educational purposes. While conducting research in one village in central Seram, Dr. Sasaoka (pers. comm. 2009, p. 2) wrote that hunting with air guns for food started in 2000. Although the use of air guns was not common in his research site, about 10 villagers were using air guns to hunt Columbidae species (pigeons and doves). If a hunter encountered a salmon-crested cockatoo in the forest or garden by chance, the hunter would shoot it for food. Based on Dr. Sasaoka's unpublished field data, about 40 salmon-crested cockatoos were shot and killed by air gun hunting in 2003. This information raises questions on the use of air guns on Seram. Without additional data, however, we are unable to assess the possible impact air gun hunting may be having or will have on the survival of salmon-crested cockatoos. We are not aware of any overutilization of the salmon-crested cockatoo for recreational, scientific, or educational purposes that is a threat to the species now or in the foreseeable future.

Release of confiscated cockatoos. In recent years, small numbers of confiscated salmon-crested cockatoos have been rehabilitated and released into the wild. In 2005, the Kembali Bebas Avian Center for the rescue and rehabilitation of Indonesian parrots was established on Northern Seram (IPP 2008c, p. 1; Price 2008, p. 2). In March 2006, three illegally trapped salmon-crested cockatoos, which had been confiscated from local trappers by forestry officials in 2004, were released on Seram. The birds were tested for diseases, observed for wild behaviors, fitted with a leg band, and tagged with a microchip to allow for long-term monitoring (IPP (Indonesian Parrot Project) 2008a, p. 2). In January 2008, six more salmon-crested cockatoos were released, and in February 2008, seven more were released. The project provides the government a means of disposing of confiscated parrots. It also gives local villagers pride in their native birds and teaches them the principles of conservation (ireport 2008, pp. 2–3). Because releasing birds has the risk of introducing diseases into wild populations, the Center uses the IUCN and CITES guidelines (Metz 2007c, p. 7). However, among some parrot experts, the release of confiscated birds is generally the least favorable conservation option and should be avoided because of the risk of introducing diseases into wild populations (Snyder *et al.* 2000, pp. 22–24).

Local involvement. Indonesia is a culturally diverse country and the values and perceptions of many Indonesians may differ from those of western conservationists. Many rural villagers are unaware that birds have restricted distributions and do not understand the concept of extinction. Thus, they may think that, when a population declines, the birds moved into the hills or are getting smarter and, therefore, harder to catch. In addition, using and trading natural resources is a basic part of Indonesian culture and economy (Snyder *et al.* 2000, pp. 60–61). As a result, one of the most important components of successful conservation programs is local education that promotes optimism, cooperation, and collaboration and helps people discover and understand the underlying causes of environmental problems (Snyder *et al.* 2000, pp. 14–15).

Others also have recognized the need for a strong awareness campaign concerning the legal and conservation status of the salmon-crested cockatoo (BLI 2001, p. 1668; Metz 1998, p. 11). The IPP is a nonprofit organization dedicated to the conservation of wild Indonesian parrots, with goals to teach the principles and value of conservation, replace trapping of parrots with sustainable economic alternatives, work with the Indonesian authorities to rehabilitate and release confiscated parrots back into the wild, conduct scientific research, and provide information (Metz 2007c, p. 6). IPP started a Conservation-Awareness-Pride (CAP) program to reach adults and

children in the villages where the birds are trapped and in the cities where the birds are most often shipped for sale (Metz 2007a, p. 1). The program is using the salmon-crested cockatoo as a flagship species for conservation to familiarize the people, especially the children, of Maluku Province with the image of its unique endemic parrots (IPP 2008b, p. 1). In 2007, IPP reported that almost 4,500 students have participated in the CAP program, which was showing progress (Metz 2007a, p. 1–2). A new nongovernmental organization was formed to help carry out this work (IPP 2008b, p. 2).

Other anti-poaching programs of the IPP include providing sustainable income for local villagers to reduce trapping and smuggling (IPP 2008c, p. 2). Former parrot poachers earn a living by providing the day-to-day care of rescued parrots at the Kembali Bebas Avian Center for the rescue and rehabilitation of Indonesian parrots. Villagers also are employed to collect and process the nuts of the kenari tree (*Canarium* spp.), which are part of the diet of larger cockatoos. The nuts are sold to parrot owners outside of Indonesia and all proceeds are used to pay workers (Metz 2007c, p. 13).

Ecotourism can provide economic benefits to local communities and lead them to value and protect species and ecosystems (Snyder *et al.* 2000, p. 16). The development of tourism is one of the priorities of Maluku Province. In 1981, Smiet & Siallagan (1981, p. 18) wrote that the scenic beauty and colorful wildlife of Seram would be great tourist attractions. The *Proposed Manusela National Park Management Plan 1982–1987*suggested that tourist accommodations be developed in the Manusela Valley of the park (Smiet & Siallagan 1981, p. 32). However, Edwards (1993, p. 11) suggested that the irregular and difficult means of transportation and lack of infrastructure and facilities for tourists are unlikely to encourage large numbers of visitors. Despite these difficulties, in 2001, Project Bird Watch led its first eco-tour of Seram (St. Joan 2005, p. 24), followed by additional tours (IPP 2009, p. 1). These tours provide ex-trappers and other villagers income by acting as bird guides, porters, and cooks. The local people see that their birds can attract people from others parts of the world, providing money and hopefully instilling pride in Indonesian birds (Metz 2007c, p. 12). Other ecotourism has developed on a small scale. In 2008, a few Internet sites advertised or reported on bird watching tours to Seram (Bird Tour Asia 2008, pp. 1–3; Eco-Adventure in Indonesia 2008, p. 1; King Bird Tours 2007, pp. 1–6).

Summary of Factor B

Keeping pet birds, especially parrots, plays an important role in Indonesian culture, creating a massive demand for parrots internationally and domestically. By the 1980s, uncontrolled trapping of salmon-crested cockatoos for the pet bird trade was adversely impacting the species. Based on CITES records, 74,838 birds were exported from Indonesia between 1981 and 1990, with international imports averaging 10,482 annually. Because trade was having a detrimental effect on wild populations, the CITES countries voted to transfer the species to CITES Appendix I, effective January 18, 1990.

An Appendix-I listing generally precludes commercial trade in wild-caught birds, but it is difficult to quantify undocumented illegal international and domestic trade.

Illegal trapping and trade in wild-caught salmon-crested cockatoos continues today, with high domestic consumption. Hunting of parrots by people to supplement their income is relatively common on Seram. Interviews in villages suggested that perhaps as many as 4,000 salmon-crested cockatoos (approximately 6.4 percent of the population) are captured annually, with an estimated 80 percent sold within Indonesia and 20 percent put in international trade. The salmon-crested cockatoo is still sold openly in the markets of Ambon and elsewhere in Indonesia. Generally, little is known about how the domestic trade in birds in Indonesia is affecting wild populations. Little information is available on the number and age of birds being taken from the wild and when and where the birds are being trapped. In addition, it is difficult to assess the effects of trade on wild populations because trade is occurring at the same time as the loss of the species' habitat.

Illegal trade is difficult to control because Indonesia has a vast coastline; government officials have limited resources and knowledge to deal with the illegal pet trade, have conflicts of interest, and lack a willingness to take action; and there is widespread corruption. Indonesia is a member of ASEAN–WEN and has made an effort to train some of their police, forestry, and Customs officers in methods to tackle poaching and smuggling. However, outside of a recent sting operation involving the salmon-crested cockatoo, the wildlife protection laws have not been vigorously enforced for this species.

Recent information that hunters from one small village in central Seram used air guns to kill 40 salmon-crested cockatoos for food in one year is of concern. Without additional information, however, we are unable to assess the possible impact air gun hunting may be having or will have on the survival of the salmon-crested cockatoo.

In recent years, several programs—rehabilitation and release of confiscated parrots, public awareness program, economic incentive program, and ecotourism—were established on Seram to support the conservation of the salmon-crested cockatoo. It is too soon to assess if these programs have been successful in gaining local support and reducing poaching. At this time, poaching of the salmon-crested cockatoos for the commercial pet trade and use of wild-caught salmon-crested cockatoos as pets in Indonesia continues.

In summary, we find that uncontrolled, illegal domestic and international trade of salmon-crested cockatoos as pets is a threat to the continued existence of this species throughout all of its range in the foreseeable future. Although the recent use of air guns to hunt salmon-crested cockatoos for food is of concern, based on the best available information, we find that overutilization of the cockatoo for recreational, scientific, or education purposes is not a threat to the continued existence of this species in any portion of its range now or in the foreseeable future.

Factor C. Disease or Predation

Diseases—general. One of the most serious diseases found in cockatoo species is beak and feather disease. All cockatoo species are likely susceptible to this disease. The disease affects wild and captive birds, with chronic infections resulting in feather loss and deformities of beak and feathers. Birds usually become infected in the nest by ingesting or inhaling virus particles. Birds develop immunity, die within a couple of weeks, or become chronically infected. No vaccine exists to immunize populations (Cameron 2007, p. 82). In Indonesia's Kembali Bebas Rescue and Rehabilitation Center on Seram, 50 cockatoos have been screened for beak and feather disease. None of the birds was found to be positive for the virus, but a number had positive antibodies to the virus (Metz 2007b, p. 3).

Another serious disease that has been reported to infect cockatoos is proventricular dilatation disease (PDD). It is a fatal disease that poses a serious threat to domesticated and wild parrots

worldwide, particularly those with very small populations (Kistler *et al.* 2008, p. 1; Waugh 1996, p. 112). This contagious disease causes damage to the nerves of the upper digestive tract, so that food digestion and absorption are negatively affected. The disease has a 100 percent mortality rate. In 2008, researchers discovered a genetically diverse set of novel avian bornaviruses that are thought to be the causative agents, and developed diagnostic tests, methods of treating or preventing bornavirus infection, and methods for screening for the anti-bornaviral compounds (University of California at San Francisco 2008, p. 1). We are unaware of any reports that this disease occurs in salmon-crested cockatoos in the wild.

Disease—avian influenza. Wild birds, especially waterfowl and shorebirds, are natural reservoirs of avian influenza. Most viral strains have low pathogenicity and cause few clinical signs in infected birds. However, strains can mutate into highly pathogenic forms, which is what happened in 1997 when highly pathogenic avian influenza H5N1 first appeared in Hong Kong (USDA *et al.* 2006, pp. 1–2). The H5N1 virus is mainly propagated by commercial poultry living in close quarters with humans. The role of migratory birds is less clear (Metz 2006a, p. 24). Scientists increasingly believe that at least some migratory waterfowl carry the H5N1 virus, sometimes over long distances, and introduce the virus to poultry flocks (WHO 2006, p. 2). The H5N1 virus has infected and caused death in domestic poultry, people, and some wild birds in Asia, Europe, and Africa. About half of infected people die from the disease (FWS 2006, p. 1). As of September 10, 2008, Indonesia confirmed its 136th human case (WHO 2008, p. 26). As of December 2006, avian influenza was not present in fowl in the Maluku Province (Metz 2006b, p. 42).

There has been only one documented case of avian influenza H5N1 in parrots—a parrot held in quarantine in the United Kingdom was diagnosed with the disease. However, from 2004–2006 (Metz 2006a, pp. 24–25), fears of the avian influenza H5N1's risk to human health resulted in the culling of wild and pet birds in Asia and Europe, including the salmon-crested cockatoo. In the Philippines, 339 smuggled parrots were euthanized following confiscation. In Taiwan, 28 palm and salmon-crested cockatoos were euthanized at the airport out of fear that they might harbor the disease. In Indonesia, Agriculture officials announced that all birds, including pet birds, within a given radius of chickens infected with avian influenza would be culled. Except, when avian influenza struck Ragunan Zoo in Jakarta, parrots and cockatoos were not euthanized unless testing showed they had the disease (IPP 2006, p. 1).

Predation. Man probably introduced rats, mice, pigs (*Sus celebensis*), deer (*Cervus timorensis*), civit (*Paradoxurus hermaphroditus*), and oriental civit (*Viverra tangalunga*) to Seram (Smiet & Siallagan 1981, p. 8). Goats, horses, cows, and water buffalo (*Bubalus bubalis*) also have been introduced. Although the deer as grazers have some adverse effect on low forest brush (Ellen 1993, pp. 193, 201), we are unaware of an adverse effect to the salmon-crested cockatoo's habitat. The cockatoo has natural predators, such as snakes and monitor lizards, that raid the nest for eggs and chicks (Metz *et al.* 2007, p. 37).

Summary of Factor C

Disease and predation associated with salmon-crested cockatoos in the wild are not well documented. Although some serious diseases—such as beak and feather disease and PDD—occur in cockatoos in the wild, we found no information that these diseases occur in salmon-crested cockatoos in the wild. Cases of avian influenza H5N1 are continuing to occur in Indonesia; however, parrots generally are not considered to be natural reservoirs of this disease. While there is the potential for captive-held salmon-crested cockatoos to be euthanized, especially smuggled ones that have been seized at ports, the number of birds euthanized is small and not a threat to the species.

A number of introduced mammals occur on Seram, but we are unaware of any predation on the salmon-crested cockatoo from these introduced mammals. The salmon-crested cockatoo has natural predators, but we were unable to find information that these natural predators are having any significant negative impact on the productivity of this species. Thus, we find that neither disease nor predation is a threat to the salmon-crested cockatoo in any portion of its range now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

As described below, Indonesia has laws and regulations in place to conserve biodiversity, manage forest, regulate trade, provide species protection, and develop and manage protected areas.

Biodiversity. The Indonesian Government has passed legislation to control activities that have an adverse impact on the environment and to conserve biodiversity. In 1991, it drafted the Biodiversity Action Plan (BAP), which became a comprehensive framework for biodiversity conservation, advocating a wide range of policy and institutional reforms to slow the rate of biodiversity loss. In 1997, the government produced Agenda 21-Indonesia, a National Strategy for Sustainable Development. These two documents recognize a complex mix of problems, including increasing population, poor implementation of regulations, conversion of forests to agricultural lands, transmigration projects, disregard of land tenure, breakdown of traditional community management, unsustainable logging, and poaching.

The main objectives of the BAP are to slow the loss of primary forests and other habitats, expand data on Indonesia's biodiversity, and foster sustainable use of biological resources. Agenda 21-Indonesia broadly develops the BAP. For example, *in situ* conservation would include establishing an integrated protected area system, gaining local support for protected areas, developing sustainable means of funding for protected areas, and supporting donor activities to maximize conservation efforts (Murdoch University 2000, pp. 1–2).

The U.S. Agency for International Development (USAID) assessed the status of biodiversity in Indonesia under the Foreign Assistance Act and concluded that threats to biodiversity had worsened since 1998 and decentralization had led to increased exploitation of biodiversity (Rhee *et al.* 2004, p. xvii). Most managers at the district level are generally unaware or uncaring of biodiversity issues (Jepson *et al.* 2001, pp. 859–860).

Forest management. The Indonesian government has laws and regulations in place to support sustainable forest management. The primary law is the Basic Forestry Law (Act No. 41). It provides for the management of forest conservation, protection, and production; defines main forest functions; and deals with forest management, planning, research, development, education, training, and enforcement (Act 1999, pp. 11–14; FAOLEX 2008b, p. 1; Rhee *et al.* 2004, chap. 2 p. 3). Presidential Instruction No. 4/2005 describes the duties of the different responsible government entities and addresses the eradication of illegal logging by taking action against anyone who harvests or collects timber forest without a license; receives, buys, or sells timber collected illegally; or carries, controls, or has timber without

a certificate of legitimacy (Indonesia 2005, pp. 1–3; FAOLEX 2009, p. 1).

Agenda 21-Indonesia identifies the major shortcomings in the management of production forests to include current concession policies and logging practices (Murdoch University 2000, p. 1). A major threat to Indonesia's forest resources is conflict: (1) Among local communities and between local communities and concessions over management and extraction rights; and (2) between different levels of government over licensing and regulation of timber extraction and forest conversion (Rhee *et al.* 2004, chap. 6 p. 9). Land tenure and access in forests are contentious issues. The Indonesian government has jurisdiction over all resources, but has often ignored the land use or ownership claims of local peoples (Rhee *et al.* 2004, chap. 2 pp. 21–22).

In addition, the laws and regulations are frequently ignored, in part because of widespread corruption (BLI 2008k, p. 7). The Indonesian economic crisis that led to the downfall of the Suharto regime resulted in the government instituting a rapid and far-reaching decentralization that gave local government greater autonomy (Down to Earth 2000, p. 1). Decentralization resulted in confusion of roles and responsibilities, and implementation of decentralization has been slow and uncertain because of conflicting interpretation of policies and priorities and the lack of capacity or experience of local governments to manage (Rhee *et al.* 2004, chap. 2 p. 20).

USAID also assessed the status of forests in Indonesia under the Foreign Assistance Act and concluded that threats to forests had worsened since 1998 and decentralization had led to worse forestry practices and increased conflict over land tenure (Rhee *et al.* 2004, p. xvii). The responsibility for the management of forests was placed at the district level within provinces, but criteria and standards were still set by the central government. Most districts do not have the capacity for planning for sustainable development and have limited capacity to govern. Today, Indonesia is torn apart by economic and political crises, and the gap between sustainable forest management and the reality of current mismanagement is wide (Jepson *et al.* 2001, pp. 859–860).

In 2008, the Indonesian Government reported to the Commission on Crime Prevention and Criminal Justice on its strategic plan on forestry, outlining its priorities of fighting illegal logging, controlling forest fires, restructuring the forestry sector, rehabilitating and conserving forest resources, and decentralizing forest management. The Government said it was committed to intensifying the fight against illegal logging by implementing a forest crime case tracking system, prosecuting forest crimes, and enhancing collaboration by sharing information on forest crime and illegal timber shipments (Commission on Crime Prevention and Criminal Justice 2008, p. 4).

International wildlife trade. Indonesia has been a member of CITES since December 28, 1978. It has designated Management, Scientific, and Enforcement authorities to implement the treaty (CITES 2008b, p. 1) and has played an active role in CITES meetings.

Species protection and management plans. Indonesian Law 5/1990, Conservation of Biodiversity and Ecosystems, establishes the basic principles and general rules for the management, conservation, and use of biological resources, natural habitats, and protected areas. Protected species may not be captured, collected, displaced, killed, destroyed, transported, or traded except for the purposes of research, science and safeguarding the plants or animals. People that violate the Act are subject to fines and punishment (Act 1990, pp. 1–44; FAOLEX 2008a, p. 1).

The salmon-crested cockatoo is on the Indonesian Government list of protected species (Rhee *et al.* 2004, chap. 5 pp. 2, App. VIII). While laws to protect species are in place, enforcement often is severely lacking (Shepherd *et al.* 2004, p. 4) or difficult, given the thousands of islands that make up Indonesia (Nichols *et al.* 1991, p. 1) and considering that illegal activities remain socially acceptable at the local level. Thus, the law is generally disregarded and only sporadically enforced (Kinnaird 2000, p. 14). Few enforcement officers are trained in species identification, and the enforcement agency lacks capacity and incentive. To further complicate enforcement, some bird dealers claim that members of the Department of Forest Protection and Nature Conservation are involved in the trade (Shepherd *et al.* 2004, p. 4) (see Factor B for a discussion of the problems relating to stopping illegal trade in salmon-crested cockatoos).

In 1982, Indonesia used the best principles of conservation biology to plan a national protected area system, with the development of a national conservation plan (NCP) (Jepson *et al.* 2002, p. 40). Large areas were proposed as conservation areas. Subsequently, forests were also allocated for production, watershed protection, or conservation, and Indonesia endorsed the principles of sustainable forest management. However, these principles were never fully reconciled with national policy and practice (Jepson *et al.* 2001, p. 859). As a result, reserves generally have not been added to the proposed network of the NCP, and existing reserves have not been managed effectively (Whitten *et al.* 2001, p. 1). Agenda 21-Indonesia identifies problems faced in managing protected areas, including the ''lack of public participation, lack of management framework, the need for regional income, insufficient funding and lack of law enforcement'' (Murdoch University 2000, pp. 1–2).

In reviewing the efficacy of the protected area system of East Kalimantan Province, Indonesia, Jepson *et al.* (2002, pp. 31, 39–40) found that key reserves either had not been established or were degraded (i.e., moderate and widespread habitat modification or populations of key fauna significantly reduced). They concluded that turning reserve planning into practice had failed because of local-level sociopolitical realities. The ability of the Indonesian government to manage and protect reserves or to establish reserves that were proposed in the NCP in East Kalimantan, and in Indonesia as a whole, had been severely constrained by problems, including insufficient funding, workforce shortages, weak penalties, a general lack of support for conservation in society, corruption, and the aggressive use of resources by migrants.

We are unaware of any review of the efficacy of protected areas in Seram, but find that the general conclusion of the East Kalimantan study applies. Wai Bula, an area in the northeastern part of Seram (Kinnaird *et al.* 2003. p. 230), illustrates the inability of the Indonesian government to implement the NCP. Wai Bula, proposed as a nature reserve in 1981, was never officially designated and has a low probability of future protection (Kinnaird *et al.* 2003, p. 231). It has been identified as an IBA (see above) with primary lowland and lower montane forests and a current population of cockatoos (BLI 2008f, p. 1). It was proposed as a nature reserve, but 93 percent is also under logging concessions (Kinnaird *et al.* 2003, p. 231). Resolution of these conflicting land use designations would have a considerable impact on the amount of protected habitat available for the salmon-crested cockatoo (Kinnaird *et al.* 2003, p. 231).

Habitat protection. The unique wildlife and plants of Seram are somewhat protected by Manusela National Park, an area of 2,323.2 km^2 (896.8 mi^2) in the center of the country,

and Gunung Sahuwai Nature Reserve, an area of 122.8 km² (47.4 mi²) on the western peninsula. Under Act No. 5 of 1990 on the conservation of biological resources and their ecosystems, the use of biological resources and their ecosystems in protected areas is to be sustainable, and plants and animals are to be managed with consideration of their long-term survival and maintenance of their diversity. Research, education, improvement of the species, and recreational activities are permitted, but other activities are prohibited (FAOLEX 2008a, pp. 1–2).

Although 14 percent of the forests on Seram are in protected areas, 15 percent of Manusela National Park is under logging concessions and 4.6 percent has been converted to other land uses. A road has been built through the park, which increases the risk of logging and human encroachment. Five villages of indigenous people, who mainly work as dry land farmers and hunt and collect forest products (including parrots), exist in the park. In 1980, 999 people lived within the park boundaries, and 19,102 people lived within 10 km (6 mi) of its boundaries. We are unaware of logging concessions in Gunung Sahuai Nature Reserve, and it has experienced less (3.1 percent) land conversion and human encroachment (Kinnaird *et al.* 2003, pp. 230–231).

The regulations and management of the protected areas are ineffective at reducing the threats of habitat destruction (see Factor A) and poaching for the pet trade (see Factor B). Reserve management is at the national level—the responsibility of the Directorate General of Forest Protection and Nature Conservation. Effective reserve management is hampered by a shortage of staff, expertise, and money, and the remoteness of protected areas. The recent civil unrest forced a reduction in conservation programs, with some protected areas virtually unsupervised (BLI 2008k, p. 9).

Summary of Factor D

While Indonesia has a good legal framework to manage wildlife and their habitats, implementation of its laws and regulatory mechanisms has been inadequate to reduce the threats to the salmon-crested cockatoo. As discussed in Factor A, we found that logging and conversion of forests to agriculture and plantations are primary threats to the habitat of the salmon-crested cockatoo. Laws and regulations are frequently ignored, and illegal logging is considered a leading cause of forest degradation in Indonesia. The decentralization of government has led to worse forestry practices, increased exploitation of resources, and increased conflict over land tenure. Current concession policies and logging practices hamper sustainable forestry. Because nearly 50 percent of Seram's forests are held under logging concessions, with more than 75 percent within the salmon-crested cockatoo's favored lowland habitat, the proper management of these logging concessions could determine the survival of this species.

The salmon-crested cockatoo is listed in Appendix I of CITES (see discussion in Conservation Status above), which appears generally to have controlled international trade. However, as discussed in Factor B, uncontrolled illegal domestic and international trade continues to adversely impact the salmon-crested cockatoo. The species is on Indonesia's list of protected species, and the law provides prohibitions, including capture and trade, and lays out fines and punishment. However, the law is generally ignored and only sporadically enforced.

Manusela National Park and Gunung Sahuwai Nature Reserve provide some protection to the salmon-crested cockatoo. Management of these protected areas, however, is hampered by staff shortages, lack of expertise and money, and remoteness of the areas. Another Important Bird Area, Wai Bula, was proposed as a nature reserve in 1981, but was never officially designated. Resolution of its designation would increase the amount of protected habitat available for the salmon-crested cockatoo, but the delay in making such a designation reflects the inability of the Indonesian government to implement the national conservation plan.

In summary, we find that the existing regulatory mechanisms, as implemented, are inadequate to reduce or remove the current threats to the salmon-crested cockatoo. There is no information available to suggest these regulatory mechanisms will change in the foreseeable future.

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

Forest fires. Fires in tropical forests are becoming increasingly common (Cochrane 2003, p. 913; Kinnaird & O'Brien 1998, p. 954; Uhl & Kauffman 1990, p. 437; Woods 1989, p. 290). For example, in 1983, disastrous, large-scale El Niño wildfires occurred in the tropical forests of Borneo, although severe droughts had occurred previously without causing extensive fires. Woods (1989, p. 290) concluded that the extensive fires were the result of forests becoming more fire-prone due to logging, road building, and cultivation. He also found that potential recovery of forest structure is not good in logged forests, especially if further burning occurs. The 1997–98 El Niño fires in Indonesia devastated vast tracts of forest, especially in the islands of Sumatra and Kalimantan (islands to the far west of Seram) and Irian Jaya (a neighboring island to the east of Seram) (Kinnaird & O'Brien 1998, p. 954). The forest fires were mainly caused by poor logging practices, burning of agriculture land, and land clearing for plantations (Grimmett & Sumarauw 2000, pp. 6, 8; Kinnaird & O'Brien 1998, p. 954).

Forest fires are often part of El Niño events, which are expected to increase in number and severity due to global climate change. Using a global climate model that had successfully predicted the 1997–98 El Niño, Timmermann *et al.* (1999, pp. 694–696) looked at the effect of future greenhouse warming on El Niño frequency. They concluded that, if emissions of greenhouse gases continue to increase, events typical of El Niño will become more frequent and variations may become more extreme. Because more tropical forests are becoming disturbed and because the number of El Niño events is predicted to increase and be more severe, serious fires in Indonesia, including Seram and other areas of the tropics, are likely to remain a critical conservation concern (Adeney *et al.* 2006, p. 292).

Fires can lead to the long-term decline of the rain forest, with destruction of leaf litter and the seedling-sapling layer, increased invasion of exotic plants, increased tree mortality, and changes in the soil. Although many animals have the ability to escape direct mortality from fire, they also may be negatively affected by loss of food, shelter, and territory. For example, the number of frugivorous and omnivorous birds declined after the 1997–98 El Niño fire in Indonesia, with helmeted and rhinoceros hornbills (*Buceros rhinoceros* and *B. vigil*) declining by 50 percent in one study area (Kinnaird & O'Brien 1998, p. 955).

At the current time, high impact fires are not adversely affecting the habitat of the salmon-crested cockatoo. In 1985, Ellen (1985, p. 567) wrote that fires seldom get out of hand in Seram when land is cleared for agriculture. In 1998, Metz (1998, p. 11) reported that the 1997–98 EL Niño fires in Indonesia are said to have not affected Seram. However, because devastating El Niño fires have been shown to occur more frequently in logged or disturbed forests and Seram has extensive logging planned and ongoing clearing of land for plantations and agriculture, El Niño-

related fires will likely have a severe impact on Seram in the future (Kinnaird *et al*. 2003, p. 234).

Civil unrest. Unlike the rest of Indonesia, which is 90 percent Muslim, the Moluccas have equal numbers of Christian and Islamic followers. Under the Suharto government, primarily Muslim transmigrants moved to Seram, and the government assigned officials, police, and military from outside the region. Rioting between Muslim and Christain citizens became an ongoing problem in Seram. In 1999 and 2001, as Indonesia plunged into a deep economic crisis, resentments erupted and thousands of people were killed (Javaman 2009, p. 1). It is unknown if the civil unrest affected the salmon-crested cockatoo, but the violence temporarily stopped development. On the other hand, soldiers like parrots, and a heavy military presence led to a rise in cockatoo trade (Kinnaird 2000, p. 15).

Persecution. In 1864, Wallace (p. 279) reported that the salmon-crested cockatoo was considered a harmful pest in coconut palms around villages on Seram. The cockatoos gnawed through shells of young coconuts to reach the pulp and water inside. Historically, the cockatoo was persecuted (BLI 2004, p. 2; Metz 1998, p. 10), but BLI (2008b, p. 2) reports this persecution is in the past and unlikely to return.

Summary of Factor E

Forest fires negatively impact birds by direct mortality or the loss of food, shelter, and territory. Research has shown that frugivorous and omnivorous birds may decline by 50 percent as a result of fires in areas of disturbed tropical rain forests. Forest fires are becoming more common in tropical rain forests, occurring more frequently in logged or disturbed areas. As discussed in Factor A above, logging and conversion of land to agriculture and plantations is ongoing and will likely increase in the future on Seram. Approximately 75 percent (8,271 km^2 (3,193 mi^2)) of the lowland habitat favored by the salmon-crested cockatoo is under logging concession. Approximately 44 percent (6,220 km^2 (2,401 mi^2)) of Seram's lowland forest is slated for conversion and, by 2028, most of this land will be converted to agriculture or plantations. Therefore, we find that, even though fires are not currently adversely affecting the salmon-crested cockatoo, fires will be a threat to this species throughout all of its range in the foreseeable future due to the extensive planned logging and clearing of land for agriculture and plantations and predicted increase in number and severity of El Niño events due to global climate change.

Civil unrest is an ongoing problem on Seram, but we are unaware that it has adversely impacted the salmon-crested cockatoo other than a possible increase in sporadic illegal trade, which is discussed under Factor B. The persecution of salmon-crested cockatoo as pests in coconut palm groves does not appear to be a problem today. Thus, we find that neither civil unrest nor persecution is a threat to the salmon-crested cockatoo in any portion of its range now or in the foreseeable future.

Status Determination for the Salmon-crested Cockatoo

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the salmon-crested cockatoo. The species is at risk of extinction in the foreseeable future throughout all of its range primarily due to extensive logging and conversion of lowland forests to agricultural lands and plantations (Factor A) and uncontrolled, illegal trapping for the domestic and international pet trade (Factor B). Also, existing regulatory mechanisms, as implemented, are inadequate to mitigate the current threats to the salmon-crested cockatoo (Factor D). Although El Niño forest fires are not currently adversely affecting the salmon-crested cockatoo, fires will be a threat in the foreseeable future due to the extensive planned logging and clearing of land and predicted increase in number and severity of El Nio events due to global climate change (Factor E).

The salmon-crested cockatoo is endemic to the island of Seram, with records from three small adjacent islands. Current populations are estimated at 62,400 individuals, with a decreasing population trend. The cockatoo is largely a resident of lowland rain forests, predominately between 100–600 m (328–1,968 ft), with the highest densities of birds occurring in little-disturbed forests. It requires large, mature trees for nesting.

Logging and conversion of forests to agriculture and plantations are primary threats to the habitat of the salmon-crested cockatoo in the foreseeable future. By 2001, about 20 percent of the original forest cover had been cleared. Nearly 50 percent of the island's forests are held under logging concessions, of which 75 percent are held within lowland forests, prime salmon-crested cockatoo habitat. Unsustainable logging practices destroy the forest canopy and dramatically reduce habitat available for cockatoos, especially if large nest trees and strangling figs are harvested. Between 1980 and 1990, an estimated 1,200 km^2 (463 mi^2) of the salmon-crested cockatoo's habitat was lost. In addition, about 44 percent of lowland forest is designated as conversion forest. Researchers predict that by 2028, up to 50 percent of the current salmon-crested cockatoo population (at least 31,000 cockatoos) may be lost as a result of conversion of forests to agriculture and plantations. Although about 14 percent of the forests are within protected areas, logging concessions are held in 15 percent of these areas, and small-scale illegal logging and human encroachment also occur there. By 2028, extensive logging and conversion of lowland forests to agriculture and plantations, combined with transmigratory human resettlement, oil exploration, and infrastructure development, are likely to destroy much of the salmon-crested cockatoo's habitat.

Illegal trapping of the salmon-crested cockatoo for the pet trade is widespread. Pet birds are an important part of Indonesian culture, with large numbers of wild-caught parrots traded domestically and internationally. In the late 1970s, the salmon-crested cockatoo was extensively trapped for the pet bird trade. By the 1980s, the pet bird trade was adversely impacting the species. Between 1981 and 1990, 74,838 birds were exported from Indonesia and international imports averaged 10,482 annually. Although the salmon-crested cockatoo was transferred to Appendix I of CITES, trappers reportedly remain active, and wild-caught birds are openly sold in domestic markets. Interviews in villages suggest that perhaps as many as 4,000 birds, or 6.4 percent of the current estimated population, are still being captured annually, with 80 percent traded domestically and 20 percent internationally. Ending illegal trade is hampered by Indonesia's large coastline, officials with limited resources and knowledge, and corruption. The continuing illegal trade of the salmon-crested cockatoo is a threat to the survival of the species in the foreseeable future.

Indonesia has a good legal framework to manage wildlife and their habitats, but implementation of its laws and regulatory mechanisms has been inadequate to address the threats to the salmon-crested cockatoo. Logging laws and policies are frequently ignored and rarely enforced, and illegal logging is rampant, even occurring in national parks and nature reserves. Current concession policies and logging practices hamper sustainable forestry. The salmon-crested cockatoo is a protected species in Indonesia, and the

law provides prohibitions on capture and trade and also provides for fines and punishment. Again, the law is generally ignored and only sporadically enforced. Illegal bird trade is socially acceptable, making it difficult to enforce laws. Public awareness programs, economic incentive programs, and ecotourism are in their infancy, and it is too early to tell if they are helping to control poaching on the island. The illegal trade of the salmon-crested cockatoo for the domestic trade, and to a smaller extent international trade, continues to occur.

Fires are becoming more common in tropical rain forests where logging, road building, and clearing of land for agriculture occur. Fires can lead to the long-term decline of the rain forest, and many animals may be negatively affected by loss of food, shelter, and territory. Currently, high impact fires are not adversely affecting the habitat of the salmon-crested cockatoo, but due to future planned extensive logging and clearing of land for agriculture and plantations and predicted increase in number and severity of El Niño events, fires will be a threat to this species in the foreseeable future.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The salmon-crested cockatoo population estimate is approximately 62,400 and the threats of habitat loss and trade are not at a level to consider the species to be in danger of extinction at this time. Densities are highest in primary and disturbed primary forest, but the cockatoo persists in secondary forest although at lower densities. However, logging and forest conversion continue to adversely affect the cockatoo's habitat. Based on the analysis of the five factors discussed above, we determine that the salmon-crested cockatoo is likely to become an endangered species within the foreseeable future throughout all of its range.

Significant Portion of the Range Analysis

Having determined that the salmon-crested cockatoo meets the definition of threatened under the Act, we considered whether there are any significant portions of the range where the species is in danger of extinction. The term ''significant portion of its range'' in the definition of an ''endangered species'' and ''threatened species'' is not defined by the Act. For purposes of this finding, a significant portion of a species' range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and where the species is not in danger of extinction. To identify those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. If the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. If the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range where the species is in danger of extinction pursuant to section 4(c)(1) of the Act.

The terms ''resiliency,'' redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering. Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean than any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species. Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

To determine whether any portion of the range of the salmon-crested cockatoo warrants further consideration as possibly endangered, we reviewed the entire supporting record for this proposed listing determination with respect to the geographic concentration of threats and the significance of portions of the range to the conservation of the species. As previously mentioned, we evaluated whether substantial information indicated that (i) the portions may be significant and (ii) the species in that portion may be currently in danger of extinction. The salmon-crested cockatoo is endemic to Seram and the three small, neighboring Indonesian islands of Ambon, Haruku, and Saparua. Very limited information is available on the status of the species on Ambon, Haruku, and Saparua. Whether this species is native or introduced to Ambon is uncertain, and a very small number of cockatoos (sightings of six to eight birds) are

thought to occur in remaining natural forests in the more remote regions of the island. The status of the salmon-crested cockatoo is unknown on Haruku and Saparua. For Haruku, there is one unspecified locality and observation reported in 1934; for Saparua, there is one specimen recorded for 1923. Even less information is available on the habitat and the threats to the species on these islands. Thus, we find that these three islands are not significant portions of the range of the salmon-crested cockatoo and do not require further consideration as to whether the species is endanger of extinction there.

The relatively larger population size in high-quality habitat on Seram suggests that this area may be a significant portion of the range. The salmon-crested cockatoo primarily occurs in lowland forests throughout the island of Seram; its current population is estimated to be approximately 62,400 birds; and the species persists in high densities in primary and disturbed primary forests on Seram. Therefore, having determined Seram may be a portion of the range that is significant, we proceeded to evaluate whether the species within this portion would qualify as endangered.

Under our five-factor analysis above, we determined that the species is threatened by logging and conversion of forests to agriculture and plantations, illegal trapping for the pet trade, inadequacy or regulatory mechanisms, and fires resulting from El Niño events throughout its entire range. The species is threatened by each of these factors uniformly throughout Seram. There is no information to suggest that the species is currently in danger of extinction because of the reasonably large population size of the species on the island and its occurrence throughout the lowland forests of Seram in primary and disturbed primary forest habitat, as well as secondary forest habitat.

Therefore, the best scientific and commercial data allows us to make a determination that there are no significant portions of the range in which the salmon-crested cockatoo is currently in danger of extinction. Although we do not believe that the species is currently endangered, we believe it is likely that the salmon-crested cockatoo will become endangered throughout its range in the foreseeable future. Thus, we propose to list the salmon-crested cockatoo as a threatened species throughout all of its range under the Act.

Available Conservation Measures

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

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

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

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. For endangered wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

Special Rule

Section 4(d) of the Act states that the Secretary of the Interior (Secretary) may, by regulation, extend to threatened species prohibitions provided for endangered species under section 9. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. For threatened species, section 4(d) of the Act gives the Secretary discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, provided that those prohibitions and exceptions are necessary and advisable to provide for the conservation of the species. A special rule allows us to include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

The proposed special rule for the salmon-crested cockatoo, in most instances, adopts the existing conservation regulatory requirements of CITES and the WBCA as the appropriate regulatory provisions for the import and export of certain captive salmon-crested cockatoos. It would also allow interstate commerce. However, import and export of birds taken from the wild after January 18, 1990, take, and foreign commerce will need to meet the requirements of 50 CFR 17.31 and 17.32. ''Take'' under the Act includes both harm and harass. When applied to captive wildlife, take does not include generally accepted animal husbandry practices, breeding procedures, or provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife. When conducting an activity that could take or incidentally take wildlife, a permit under the Act is required.

The proposed special rule would, if adopted, allow import and export of certain salmon-crested cockatoos and interstate commerce of this species without a permit under the Act as explained below.

Import and export. The proposed special rule would apply to all commercial and noncommercial

international shipments of live salmon-crested cockatoos and parts and products, including the import and export of personal pets and research samples. It proposes to allow a person to import or export a specimen that was held in captivity prior to January 18, 1990 (the date the species was transferred to CITES Appendix I) or that was captive-bred provided the import is authorized under CITES and the WBCA and export is authorized under CITES. The terms ''captive-bred'' and ''captivity'' used in the proposed special rule are defined in the regulations at 50 CFR 17.3 and refer to wildlife produced in a controlled environment that is intensively manipulated by man from parents that mated or otherwise transferred gametes in captivity. The proposed special rule would apply to birds captive-bred in the United States and abroad. Import and export is allowed without a permit under the Act provided the provisions of CITES and WBCA are met. The CITES permit needs to indicate that the specimen was not taken from the wild by using a source code on the face of the permit other than U (unknown) or W (taken from the wild). If the specimen was taken from the wild prior to January 18, 1990, the importer or exporter needs to demonstrate that the cockatoo was taken from the wild prior to that date. Under the special rule, a person needs to provide records, receipts, or other documents when applying for permits under CITES and WBCA to show the specimen was held in captivity prior to January 18, 1990.

We assessed the conservation needs of the salmon-crested cockatoo in light of the broad protections provided to the species under the WBCA and CITES. The purpose of the WBCA is to promote the conservation of exotic birds and to ensure that international trade involving the United States does not harm exotic birds (see Conservation Status). The salmon-crested cockatoo is also protected by CITES, a treaty which contributes to the conservation of the species by monitoring international trade and ensuring that trade in Appendix I species is not detrimental to the survival of the species and is not for commercial purposes (see Conservation Status). International trade of the salmon-crested cockatoo has been substantially reduced since the listing of the species in Appendix I under CITES and protection under the WBCA. A review of the CITES data, shows that in the 17 years between 1991 and 2007, 297 salmon-crested cockatoos were imported into the United States. Many of these birds are personal pets that owners took with them when travelling out of and returning to the United States. The best available commercial data indicates that the current threat to the salmon-crested cockatoo stems from illegal trade in the domestic and international markets of Indonesia and surrounding countries. Thus, the general prohibitions on import and export contained in 50 CFR 17.31, which only extend within the jurisdiction of the United States, would not regulate such activities. The Service also did not identify how import and export of salmon-crested cockatoos under the proposed special rule is associated with the threat of the species' habitat destruction. Thus, we find that the import and export requirements of the proposed special rule provide the necessary and advisable conservation measures that are needed for this species.

Interstate commerce. Under the proposed special rule, a person may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase a salmon-crested cockatoo in interstate commerce. Although we do not have current data, we believe there are a large number of salmon-crested cockatoos in the United States. Current ISIS (International Species Information System) information shows 123 salmon-crested cockatoos are held in U.S. zoos (ISIS 2008, p. 4). This number is an underestimate as some zoos do not enter data into the ISIS database. In addition, CITES annual report data shows that 58,484 salmon-crested cockatoos were imported into the United States between 1981 and 1989 (UNEP-WCMC 2009b, p. 2). We believe that a number of these birds are still held in captivity in the United States. In 1990 and 1991, surveys of captive breeding by U.S. aviculturists showed 820 and 625 salmon-crested cockatoos were held by 239 and 194 survey respondents, respectively (Allen & Johnson 1991, p. 17; Johnson 1992, p. 46). We have no information to suggest that interstate commerce activities are associated with threats to the salmon-crested cockatoo or will negatively affect any efforts aimed at the recovery of wild populations of the species. At the same time, the prohibitions on take under 50 CFR 17.31 would apply under this special rule, and any interstate commerce activities that could incidentally take cockatoos would require a permit under 50 CFR 17.32. Therefore, we find that it is not necessary or advisable for the conservation of the salmon-crested cockatoo to regulate interstate commerce of this species.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication (see DATES). Such requests must be made in writing and be addressed to the Chief of the Branch of Listing at the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Required Determinations

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq*. The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted under section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A list of the references used to develop this proposed rule is available upon request (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this notice are staff members of the Division of Scientific Authority, 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.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. Amend §17.11(h) by adding new entry for ''Cockatoo, salmon-crested'' in alphabetical order under Birds to the List of Endangered and Threatened Wildlife, as follows:

§17.11 ***Endangered and threatened wildlife.***

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	
BIRDS							
*	*	*	*	*		*	
Cockatoo, salmon-crested	*Cacatua moluccensis*	Seram, Haruku, Saparua, and Ambon, Indonesia	Entire	T		NA	17.41(c)

* * * * *

3. Amend §17.41 by adding paragraph (c) to read as follows:

§17.41 ***Special rules—birds.***

* * * * *

(c) Salmon-crested cockatoo (*Cacatua moluccensis*).

(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all prohibitions and provisions of §§17.31 and 17.32 of this part apply to the salmon-crested cockatoo.

(2) *Import and export.* The import or export of any salmon-crested cockatoo taken from the wild after January 18, 1990, requires a permit under §17.32. You may import and export a live salmon-crested cockatoo and its parts and products provided:

(i) The import or export of the specimen is authorized under the Wild Bird Conservation Act (WBCA, 16 U.S.C. 4901–4916) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, TIAS 8249);

(ii) The specimen was captive-bred and the source code on the CITES document for the specimen is not U (unknown) or W (taken from the wild); or, for a specimen that was held in captivity prior to January 18, 1990, and was not captive-bred, you provide records, receipts, or other documents when you apply for an import or export permit under CITES or an import permit under WBCA to demonstrate that the specimen was held in captivity prior to January 18, 1990; and

(iii) The person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the WBCA and CITES and their implementing regulations. Violation of WBCA or CITES would constitute a violation of the Act.

(3) *Interstate commerce.* You may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce a live salmon-crested cockatoo and its parts and products.

(4) All applicable provisions of 50 CFR parts 14, 15, 17, and 23 must be met.

Dated: October 21, 2009.

Rowan W. Gould,

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

[FR Doc. E9–26131 Filed 11–2– 09; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 74, No. 211

Tuesday, November 3, 2009

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

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets twice annually to advise the GIPSA Administrator on the programs and services that GIPSA delivers under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: November 17, 2009, 8 a.m. to 4:30 p.m.; and November 18, 2009, 8 a.m. to Noon.

ADDRESSES: The Advisory Committee meeting will take place at the Embassy Suites Hotel, Kansas City Plaza, 220 West 43rd Street, Kansas City, Missouri 64111.

Requests to orally address the Advisory Committee during the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be faxed to (202) 690–2173.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry by phone at (202) 205–8281 or by e-mail at *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the GIPSA Administrator with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71–87k). Information about the Advisory Committee is available on the GIPSA Web site at: *http://www.gipsa.usda.gov.* Under the section, ''I Want To * * *,'' select ''Learn about the Grain Inspection Advisory Committee.''

The agenda will include an update on sorghum odor, wheat standards, international programs, study on Yamamoto rice sheller, update on the status of the implementation of the Quality Management Program, proposed changes to the container regulations, and GIPSA's financial status.

For a copy of the agenda please contact Terri L. Henry by phone at (202) 205–8281 or by e-mail at *Terri.L.Henry@usda.gov.*

Public participation will be limited to written statements unless permission is received from the Committee Chairperson to orally address the Advisory Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri L. Henry at the telephone number listed above.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–26461 Filed 11–2–09; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Bighorn National Forest, USDA Forest Service.

ACTION: Notice of new fee site.

SUMMARY: The Bighorn National Forest, Powder River Ranger District, will begin charging a $10.00/vehicle per day use fee for parking at the existing developed trailhead, West Tensleep Trailhead. This trailhead is the most heavily visited access point for the Cloud Peak Wilderness. Funds from the fee will be used for the continued operation and maintenance of this site including, but not limited to: Restroom cleaning, trash pickup, sign maintenance, and law enforcement presence.

DATES: West Tensleep Trailhead will have fees charged beginning in the summer of 2010.

ADDRESSES: Forest Supervisor, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY 82801.

FOR FURTHER INFORMATION CONTACT: Craig Cope, Powder River Ranger District Recreation Staff Office, 307–684–7806.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub.L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Bighorn National Forest currently does not charge for day use parking. The need for charging for parking at West Tensleep Trailhead was identified during the Recreation Facility Analysis process completed in June 2007 and will be $10.00/vehicle day (Standard Amenity Recreation Fee). This trailhead is full to capacity or overflowing the capacity on many summer weekends. All requirements for the collection of fees as stipulated in the Federal Recreation Lands Enhancement Act will be met for this site prior to fee implementation.

Dated: October 26, 2009.

William T. Bass,

Forest Supervisor.

[FR Doc. E9–26300 Filed 11–2–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8173.

Background

On July 1, 2009, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on Saccharin from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review,* 74 FR 31406 (July 1, 2009). On July 31, 2009, Shanghai Fortune Chemical Co., Ltd. (''Shanghai Fortune''), a PRC producer and exporter of saccharin, requested that the Department conduct an administrative review of Shanghai Fortune's own exports. The Department then published in the **Federal Register** the initiation notice for the antidumping duty administrative review of Saccharin from the PRC for the period July 1, 2008, through June 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part,* 74 FR 42873 (August 25, 2009).

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On August 28, 2009, Shanghai Fortune timely withdrew its request for an administrative review of its own exports (*i.e.,* within 90 days of the publication of the notice of initiation of this review). Because no other party requested a review of Shanghai Fortune's exports, the Department hereby rescinds the administrative review of saccharin with respect to Shanghai Fortune, in accordance with 19 CFR 351.213(d)(1). This administrative review will continue with respect to Kaifeng Xinhua Fine Chemical Factory.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For Shanghai Fortune, which had previously established eligibility for a separate rate, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice. For Kaifeng Xinhua Fine Chemical Factory and for those companies which do not have a separate rate at this time (and thus remain part of the PRC-wide entity), the Department will issue assessment instructions upon the completion of this administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26324 Filed 11–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–001]

Sorbitol from France: Final Results of Expedited Five-year (Sunset) Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2009, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested party, and the lack of a response from respondent interested parties, the Department conducted an expedited (120-day) sunset review of this antidumping duty order. As a result of this sunset review, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels identified below in the ''Final Results of Sunset Review'' section of this notice.

EFFECTIVE DATE: November 3, 2009.

FOR FURTHER INFORMATION: David Cordell, AD/CVD Operations, Office 7, or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408, or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department initiated a sunset review of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 74 FR 31412 (July 1, 2009). The Department received a notice of intent to participate from one domestic interested party, Archer Daniels Midland Company (ADM) within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations.[1] A second domestic interested party, Corn Products International (Corn Products) filed its intent to participate on July 22, 2009, a week after the regulatory deadline. Further, Corn Products filed comments on July 31, 2009. The Department rejected Corn Products' filings as untimely on August 11, 2009. *See* Letter to Corn Products, dated August 11, 2009.

ADM claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise. On July 31, 2009, the Department received complete substantive responses from ADM within the 30-day deadline specified in 19 CFR 351.218(d)(3)(ii). However, the Department received no substantive responses from respondent interested parties.[2] As a result, pursuant to section

[1] Counsel for ADM notified the Department by telephone that ADM intended to participate in this proceeding and requested that ADM be permitted to file its notification one day after the regulatory deadline of July 16, 2009. The Department acceded to this request and accepted ADM's notice of intent, filed on July 17, 2009. *See* Memorandum to the file from Dana S. Mermelstein dated July 21, 2009.

[2] Roquette Freres, a respondent interested party, made a submission to the Department on August 17, 2009, containing comments on the notices of intent to participate by domestic interested parties. *See* Issues and Decision Memorandum for details. ADM

Continued

751(c)(3)(B) of the Act and 19 CFR. 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited sunset review of this order.

Scope of the Orders

The products covered by this order are shipments of crystalline sorbitol (sorbitol), a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals. The above–described sorbitol is classified under HTS subheading 2905.44.00. The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' from Richard Weible, Director Office 7 to John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, Import Administration, dated October 28, 2009, (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room 1117 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Sunset Reviews

The Department has determined that revocation of the antidumping duty order on sorbitol from France would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Roquette Freres	2.90 percent
All Others	2.90 percent

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing these results and this notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26427 Filed 11–2–09; 8:45 am]

BILLING CODE 3510–DS–S

filed comments in response to Roquette Freres on August 18, 2009 and on September 1, 2009, ADM filed comments on the Adequacy of Responses and Appropriateness of an Expedited Review.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor–Standing Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China: Final Results of Expedited Five-year (Sunset) Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2009, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on floor–standing metal–top ironing tables and parts thereof (ironing tables) from the People's Republic of China (the PRC) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department conducted an expedited (120-day) sunset review of this antidumping duty order. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels identified below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: November 3, 2009.

FOR FURTHER INFORMATION: David Cordell, AD/CVD Operations, Office 7, or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408, or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department initiated a sunset review of the antidumping duty order on ironing tables from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 74 FR 31412 (July 1, 2009). The Department received a notice of intent to participate from one domestic interested party, Home Products International (HPI), within the deadline specified in 19 CFR 351.218(d)(1)(i) of the Department's regulations. HPI claimed interested party status under section 771(9)(C) of the Act as a domestic producer of the domestic like product. We received a complete substantive response from HPI within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).

The Department also received a substantive response from one respondent party, Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On August 5, 2009 HPI submitted rebuttal comments to Since Hardware's substantive response. On August 19, 2009 the Department determined Since Hardware's substantive response to be inadequate because it failed to meet certain requirements in 19 CFR 351.218(c)(1)(ii)(A) and (d)(3)(iii)(E). For a more detailed discussion of the Department's determination regarding Since Hardware's substantive response, please see the Memorandum to the File, ''Adequacy Determination of Respondent's Substantive Comments: Sunset Review of the Antidumping Duty Order on Floor–Standing Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China (PRC)'' dated August 19, 2009. As a result of the foregoing, the Department conducted an expedited (120-day) sunset review of this order pursuant to section 751(C)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(c)(2).

Scope of the Order

For purposes of the order, the product covered consists of floor–standing, metal–top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full–height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with

various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor–standing, metal–top ironing tables are covered by this order.

Furthermore, the order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete''' ironing table means a product sold as a ready–to-use ensemble consisting of the metal–top table and a pad and cover, with or without additional features, *e.g.*, iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board'' *i.e.*, a metal–top table only, without the pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by the order under the term ''certain parts thereof≥' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. This order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor–standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables are currently classifiable under HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' from Richard Weible, Director Office 7 to John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, Import Administration, dated October 27, 2009 (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room 1117 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Sunset Reviews

We determine that revocation of the antidumping duty order on ironing tables from the PRC would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Since Hardware	9.47 percent
Shunde Yongjian	157.68 percent
Forever Holdings	72.29 percent
Gaoming	72.29 percent
Harvest	72.29 percent
Foshan Shunde	157.68 percent
PRC–Wide Rate	157.68 percent

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26426 Filed 11–2–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

University of Notre Dame, et al.

Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 09–051. Applicant: University of Notre Dame, Notre Dame, IN 46556. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 49363, September 28, 2009.

Docket Number: 09–052. Applicant: Youngstown State University, Youngstown, OH 44555. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 74 FR 49363, September 28, 2009.

Docket Number: 09–053. Applicant: University of Notre Dame, Notre Dame, IN 46556. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 49363, September 28, 2009.

Docket Number: 09–054. Applicant: University of Nebraska Medical Center 986395, Nebraska Medical Center, Omaha, NE 68198. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 49363, September 28, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: October 28, 2009.

Christopher Cassel,

Director.

Subsidies Enforcement Office Import Administration.

[FR Doc. E9–26429 Filed 11–2–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–948]

Certain Steel Grating from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain steel grating (CSG) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3964 and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department's notice of initiation in the **Federal Register**. *See Certain Steel Grating From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 30278 (June 25, 2009) (*Initiation Notice*).

On July 17, 2009, due to the large number of producers and exporters of certain steel grating in the PRC, we determined that it would not be possible to investigate individually each known exporter or producer. Therefore, based on data from U.S. Customs and Border Protection (CPB), and in accordance with section 777A(e)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), the Department selected as mandatory respondents the two largest Chinese producers/exporters of steel grating that could reasonably be examined, Ningbo Jiulong Machinery Manufacturing Co., Ltd. (Ningbo Jiulong) and United Steel Structures Ltd. (USSL). *See* Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Countervailing Duty Investigation: Certain Steel Grating (CSG) from the People's Republic of China (PRC)'' (July 17, 2009) (Respondent Selection Memorandum). A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. On July 20, 2009, we issued CVD questionnaires to the Government of the People's Republic of China (GOC), to Ningbo Jiulong, and to USSL.

At the request of Alabama Metal Industries Corp. and Fisher and Ludlow (collectively, Petitioners), on August 10, 2009, the Department postponed the preliminary determination of this investigation until October 26, 2009. *See Certain Steel Grating from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 39921 (August 10, 2009). We received responses from the GOC and both mandatory respondent companies on September 9, 2009. We issued a supplemental questionnaire to the GOC on September 30, 2009, and to Ningbo Jiulong on October 1, 2009. After providing extensions of the due date for these questionnaire responses to the GOC and Ningbo, timely responses were submitted by the GOC on October 15, 2009, and by Ningbo Jiulong on October 13 and 15, 2009.

On July 13, 2009, Petitioners submitted new subsidy allegations regarding six programs. On July 20, 2009, the GOC submitted comments on these allegations. On September 21, 2009, the Department determined to investigate four of these newly alleged subsidy programs pursuant to section 775 of the Act. *See* Memorandum to Barbara E. Tillman, Director AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China (PRC): Initiation Analysis of New Subsidy Allegations'' (September 21, 2009) (New Subsidy Initiation Memorandum). Questionnaires regarding these newly alleged subsidies were sent to the GOC and the mandatory respondent companies on September 21, 2009. The GOC, Ningbo Jiulong, and USSL submitted responses to the new subsidy allegations questionnaires on October 15, 2009. On October 20, 2009, Petitioners provided pre-preliminary comments. On October 21, 2009, the GOC submitted additional supplemental information. On October 22, 2009, Petitioners provided comments prior to the preliminary determination. On October 23, 2009, the GOC provided additional comments.

In its questionnaire response, USSL reported that it does not produce CSG. USSL does produce and sell large steel structures, for projects such as power plants, smelters, petrochemical plants and high-rise buildings, of which CSG is a minor component. The CSG incorporated into the steel structures that USSL produces and sells is purchased from an unaffiliated supplier. Based on this information, it appears that USSL is not one of the two largest producers or exporters of CSG from the PRC, and that USSL does not produce CSG. Subsequently, on October 16, 2009, USSL submitted a letter stating that it should not be considered to be an exporter of CSG for purposes of this investigation. Also on October 16, 2009, Petitioners filed a letter stating that they do not object to the deselection of USSL as a mandatory respondent.

Given this unique combination of circumstances, we have reconsidered the selection of USSL as a respondent in this investigation. Based on the information provided in USSL's questionnaire response, the letters from USSL and Petitioners, and the discretion provided to the Department under section 351.204(c)(1) of the regulations, we have decided to discontinue the individual examination of USSL in this investigation. For a detailed discussion of the bases for this decision, *see* Memorandum for Ronald K. Lorentzen from John M. Andersen, ''Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China: Whether USSL Should be Maintained as a Mandatory Respondent,'' dated October 23, 2009.

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On the same day the Department initiated this countervailing duty investigation, *see Initiation Notice*, the Department also initiated an antidumping duty investigation of certain steel gratings from the PRC. *See Certain Steel Grating from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 30273 (June 25, 2009). The countervailing duty investigation and the antidumping duty investigation have the same scope with regard to the merchandise covered.

On October 23, 2009, in accordance with section 705(a)(1) of the Act,

Petitioners requested alignment of the final countervailing duty determination with the final antidumping duty determination of certain steel grating from the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination with the final antidumping duty determination. Consequently, the final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued no later than March 13, 2010, unless postponed.

Scope Comments

In accordance with the Preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)) (*CVD Preamble*), in our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Initiation Notice*, 74 FR at 30279. No such comments were filed on the record of this investigation.

Scope of the Investigation

The products covered by the investigation are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as ''bar grating,'' although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of the investigation excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of the investigation also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of the investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On July 20, 2009, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of certain steel grating from the PRC. *See Certain Steel Grating From China Determinations*, 74 FR 35204 (July 20, 2009); and *Certain Steel Grating from China (Preliminary)*, USITC Pub. 4087, Inv. Nos. 701–TA–465 and 731–TA–1161 (July 2009).

Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and the accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that, ''given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the {PRC}.'' *See* CFS Decision Memorandum, at Comments 1 and 6.

The Department has subsequently affirmed its decision to apply the CVD law to the PRC, most recently in *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Shelving and Racks from the PRC*), and the accompanying Issues and Decision Memorandum (Shelving and Racks Decision Memorandum).

Additionally, for the reasons stated in the Shelving and Racks Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *See* Shelving and Racks Decision Memorandum, at Comment 3.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2008 through December 31, 2008.

Subsidies Valuation Information

Cross-Ownership

In its September 9, 2009 questionnaire response, Ningbo Jiulong reported that it is cross-owned with its affiliated supplier of twisted wire rod, Ningbo Zhenhai Jiulong Electronic Equipment Factory (JEE). Ningbo Jiulong reported that it purchases twisted wire rod only from JEE. The information provided by JEE shows that it sells nearly all of its production to Ningbo Jiulong. The two operations are co-located on the same premises, however, they are separately incorporated and share no common ownership. Ningbo Jiulong reported that it is a privately owned enterprise, while JEE is identified as a collectively owned enterprise (COE) under the authority of the Civil Affairs Bureau Zhenhai Ningbo. The sole ''legal representative'' of JEE is also reported as being in charge of its full operation, and is a shareholder in Ningbo Jiulong.

Ningbo Jiulong claims that it is able to use or direct the individual assets of JEE in essentially the same ways it can use its own assets, and thus meets the criteria for cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi). However, the information and supporting documentation submitted by Ningbo are not sufficient to support a finding that the legal representative is in a position to control Ningbo Jiulong as well as JEE. Nor has Ningbo Jiulong demonstrated that a private individual can control a government entity, such as a COE. Absent such information, we must preliminarily determine, contrary to Ningbo Jiulong's contentions, that the regulatory requirements for cross ownership have not been met, *i.e.*, that one company can use and control the assets of another company as its own. That Ningbo Jiulong is a privately owned company, while JEE is a COE that shares no common ownership with Ningbo Jiulong, is further evidence that Ningbo Jiulong, as a private entity, is not in the position to control or direct the use of the assets of a government-owned entity as its own. Therefore, we preliminarily determine that cross ownership does not exist between Ningbo Jiulong and JEE. As such, for the purposes of this preliminary determination, we are only examining subsidies provided to Ningbo Jiulong,

exclusive of any subsidies provided to JEE.

Application of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In the instant investigation, Ningbo Jiulong identified the producers of the hot-rolled steel input that Ningbo Jiulong used in the manufacture of the subject merchandise, but failed to provide information related to whether several of the producers were private or government- owned. The Department's original questionnaire instructed Ningbo Jiulong and the GOC to coordinate in identifying the producers of hot-rolled steel as private or government-owned. We attempted twice to solicit this information from the GOC, in both the original questionnaire and the supplemental questionnaire that was issued on September 29, 2009.

In the instant investigation, Ningbo Jiulong and the GOC withheld requested information and significantly impeded this proceeding. Specifically, Ningbo Jiulong and the GOC failed to respond to requests for information concerning certain of the producers of hot-rolled steel. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have determined, based on facts otherwise available, to treat these producers as state-owned enterprises for the purpose of identifying and measuring the countervailable subsidy rate from the GOC provision of hot-rolled steel for less than adequate remuneration.

As noted above, the GOC also failed to provide requested information about the amount of production and consumption of hot-rolled steel or coils represented by state-owned companies. In light of this, we preliminarily determine that the GOC has not acted to the best of its ability to provide the information needed for this investigation and, hence, has failed to cooperate. Consequently, an adverse inference is warranted in the application of facts available. As adverse facts available (AFA), we are assuming that the GOC's dominance of the market in the PRC for this input results in significant distortion of the prices and, hence, that use of an external benchmark is warranted.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994), at 870.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See e.g.*, SAA, at 870. The Department considers information to be corroborated if it has probative value. *See id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA, at 869.

To corroborate the Department's treatment of the companies that produced the hot-rolled steel purchased by the mandatory respondent as authorities and our finding that the GOC dominates the domestic market for this input, we are relying on *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*). In that case, the Department determined that the GOC owned or controlled the entire hot-rolled steel industry in the PRC. *See Line Pipe from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. Because there is no information available on this record to rebut that finding, we determine that the adverse inference we are applying with regard to the hot-rolled steel industry is corroborated to the extent practicable as require by the Act.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. Government Provision of Hot-Rolled Steel for Less than Adequate Remuneration

As discussed under ''Application of Facts Otherwise Available and Adverse Inferences,'' above, for purposes of this preliminary determination, we are relying on ''adverse facts available,'' in part, for our analysis regarding the GOC's provision of hot-rolled steel to producers of certain steel grating. First, as a result of the GOC's decision not to provide the requested ownership information for certain of the companies that produced the hot-rolled steel input purchased by Ningbo Jiulong during the POI, we are treating these hot-rolled steel producers as ''authorities'' within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that Ningbo Jiulong has received a financial contribution from these companies that produced the hot-;rolled steel input purchased by Ningbo Jiulong during the POI, in the form of the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. For certain other producers of the hot-rolled steel input purchased by Ningbo during the POI, the GOC has provided some information and documentation which indicates that they are privately owned. Therefore, for purposes of the preliminary determination, we are finding these producers to be privately owned. However, the GOC has not provided all of the requested supporting documentation for these companies. We intend to provide the GOC a final opportunity to submit documentation (*e.g.*, capital verification reports and articles of association) necessary to

demonstrate definitively that during the entire POI these companies were privately owned. If necessary information is not available, the Department may apply ''facts otherwise available,'' in accordance with section 776 of the Act.

The basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services is set forth in 19 CFR 351.511(a)(2). Potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada Investigation*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See Notice of Final Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (Softwood Lumber Final) and accompanying Issues and Decision Memorandum (*Softwood Lumber Memorandum*) at 36.

Beginning with tier one, the Department must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*: ''Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.'' *See CVD Preamble* at 65377. The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

As explained under ''Application of Facts Otherwise Available and Adverse Inferences,'' above, we are relying on AFA for purposes of making a preliminary determination that GOC authorities play a significant role in the PRC market for hot-rolled steel. Because of the dominant role played by GOC authorities in the production of hot-rolled steel, we preliminarily determine that the actual prices charged by privately owned producers in the PRC for hot-rolled steel during the POI are not appropriate tier one benchmarks under our regulations. *See Line Pipe from the PRC* at Comment 1.

Consequently, we determine that there are no tier one benchmark prices available for hot-rolled steel, and we have turned to a tier-two hot–rolled steel benchmark, *i.e.*, world market prices available to purchasers in the PRC under 19 CFR 351.511(a)(2)(ii). Petitioners provided ''Steel Benchmarker'' price data for hot-rolled steel. *See* Petition for the Imposition of Antidumping and Countervailing Duties: Certain Steel Grating from the People's Republic of China, May 29, 2009 (Petition) at Exhibit 77. In addition, we researched world market prices for hot-rolled steel, and we have placed on the record publicly available information on world steel prices from an industry publication, MEPS, during the POI for hot-rolled steel coil. We find that this is the most appropriate hot-rolled steel input to use based on the production process reported by Ningbo Jiulong and the 15 Chinese tariff numbers identified by the GOC under which this input can be classified. *See* Exhibit 1 of Ningbo Jiulong's September 10, 2009 questionnaire response; *see also* GOC's September 14, 2009 questionnaire response at 17–18. The Department has relied on pricing data from industry publications such as MEPS in recent CVD proceedings involving the PRC. *See* Shelving and Racks Decision Memorandum at 15; *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 31966 (*CWP from the PRC*) and the accompanying Issues and Decision Memorandum at 11 (CWP Decision Memorandum); *see also Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*) and the accompanying Issues and Decision Memorandum at 9 (LWRP Decision Memorandum). These prices of hot-rolled steel coil are reported on a monthly basis in U.S. dollars per metric ton (MT). *See* Calculation Memorandum for the Preliminary Affirmative Countervailing Duty Determination; Certain Steel Grating from the People's Republic of China (Calculation Memorandum) at Attachment 4, dated concurrently with this notice.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included a freight cost that would be incurred based on the average cost of shipping hot-rolled steel coils from Europe. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of hot-rolled steel coils into the PRC. *See* Calculation Memorandum at Attachment 4. To determine the price that constitutes adequate remuneration, we first converted the monthly MEPS prices for hot-rolled steel coils from U.S. dollars to RMB using U.S. dollar to RMB exchange rates, as reported by the Federal Reserve Statistical Release. For each month, we averaged the MEPS prices and the ''Steel Benchmarker'' prices. We then compared the monthly price Ningbo Jiulong paid to each supplier that we found to be an ''authority,'' to the corresponding month's adjusted hot-rolled steel benchmark price. Comparing the resulting monthly benchmark unit prices to the monthly average unit prices paid by Ningbo Jiulong for hot–rolled steel coil produced by the GOC during the POI, we determine that hot-rolled steel was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and what the respondent paid for hot-rolled steel coil. *See* 19 CFR 351.511(a).

Finally, with respect to specificity, although the GOC stated that the number of industries that purchase hot-rolled steel are ''too numerous to mention,'' the GOC provided no additional supporting documentation to substantiate this claim. *See* GOC's September 15, 2009 questionnaire response at 18. The questionnaire clearly requested that the GOC provide a list of industries in the PRC that purchase hot-rolled steel directly. Because the GOC did not provide the requested information necessary for analyzing specificity, we preliminarily determine that this subsidy is specific because the recipients are limited in number. *See* section 771(5A)(D)(iii)(I) of the Act. *See* Shelving and Racks Decision Memorandum at 16. Therefore, we determine that a countervailable subsidy was conferred on Ningbo Jiulong through the GOC's provision of hot-rolled steel for LTAR. To calculate the benefit, we measured the difference between the delivered world market price and the price Ningbo Jiulong paid for hot-rolled steel produced by the GOC, on a monthly basis, during the

POI. *See* 19 CFR 351.524(c). We divided the total benefit received by Ningbo Jiulong during the POI by its total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 1.61 percent ad valorem for Ningbo Jiulong.

B. *Government Provision of Wire Rod for Less than Adequate Remuneration*

The Department is investigating whether the GOC provided wire rod to the mandatory respondent for LTAR. Ningbo Jiulong reported that during the POI, it obtained twisted wire rod from a COE, JEE. The GOC has identified the 21 Chinese tariff numbers under which wire rod can be classified and provided a two-page excerpt of the PRC tariff code. *See* GOC's September 14, 2009 questionnaire response at 24. The numerous tariff numbers identified by the GOC provide only a broad classification of wire rod, and the two-page excerpt does not discuss or address the tariff numbers used by the GOC to identify wire rod, or more specifically, twisted wire rod, the type of wire rod purchased by Ningbo Jiulong. For purposes of this preliminary determination, we are considering twisted wire rod to be a type of wire rod, and as such, it is properly included in our investigation of wire rod for LTAR. We will request additional information from the GOC concerning how and where it classifies twisted wire rod within the Chinese tariff classification schedule, and whether twisted wire rod is also classifiable under any of the reported 21 tariff numbers.

In *CWP from the PRC*, the Department determined that a subsidy is conferred if the producer of the input is an ''authority'' within the meaning of section 771(5)(B) of the Act, and the price paid by the respondent for the input is less than adequate remuneration. *See* CWP Decision Memorandum at 10. Based on the record in the instant investigation, we preliminarily determine that JEE's status as a COE falls within the statutory meaning of an ''authority.'' Documentation from JEE indicates that this company is a COE owned by the Civil Affairs Bureau Zenhai Ningbo. *See* JEE's September 9, 2009 questionnaire response at 4. In the final determination of LWRP from the PRC, the Department affirmed its decision to treat collectives as government authorities. *See LWRP from the PRC*, and the LWRP Decision Memorandum at Comment 5. Because respondents have not provided information on the record to indicate that collectively-owned companies are not state-controlled, and because it appears that Jiulong Factory is owned by a local government agency (the Civil Affairs Bureau Zhenhai Ningbo), we find that Jiulong Factory should be classified as an ''authority.'' The Department will continue to evaluate this finding for the final determination. As a result, we determine that the wire rod provided by Ningbo Jiulong's sole supplier, JEE, provides a financial contribution in the form of a government provision of a good, and that Ningbo Jiulong received a subsidy to the extent that the price it paid for the wire rod produced by JEE was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada Investigation*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See Softwood Lumber Final* and Softwood Lumber Memorandum at 36.

Beginning with tier one, the Department must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*: ''Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.'' *See CVD Preamble* at 65377. The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In the instant investigation, the GOC reported the total wire rod production by state-;owned entities during the POI. *See* GOC Questionnaire Response at 22–23. The number of these state-owned entities (SOEs and COEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in *Shelving and Racks from the PRC*, in which the Department determined that the GOC had direct ownership or control of wire rod production. *See* Shelving and Racks Decision Memorandum, at Comment 4. Because the GOC has not provided any information that would lead the Department to reconsider the determination in *Shelving and Racks from the PRC*, we find that the substantial market share held by SOEs shows that the government plays a predominant role in the this market. See Shelving and Racks Decision Memorandum at 15. The government's predominant position is further demonstrated by the low level of imports, which accounted for only 0.91 percent of the volume of wire rod available in the Chinese market during the POI. *See* GOC's September 15, 2009 questionnaire response at 23. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. This is consistent with the Department's approach discussed in LWRP Decision Memorandum, at Comment 7.

In addition to the government's predominant role in the market, we found in *Shelving and Racks from the PRC* that the 10 percent export tariff and export licensing requirement instituted by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would otherwise be. See Shelving and Racks Decision Memorandum at 15.

Consequently, we determine that there are no tier one benchmark prices available for wire rod, and we have turned to a tier-two wire rod benchmark, *i.e.*, world market prices available to purchasers in the PRC under 19 CFR 351.511(a)(2)(ii). Petitioners provided price data from the ''Steel Business Briefing,'' *see,* Petition at Exhibit 77. In addition, we researched world market prices for wire rod, and we have placed on the record publicly available world steel prices from MEPS during the POI for steel wire rod. We note that the Department has relied on pricing data from industry publications such as MEPS in recent CVD proceedings involving the PRC. *See Shelving and Racks from the PRC* at 15;

see also CWP from the PRC and CWP Decision Memorandum at 20; *see also* LWRP Decision Memorandum at 9. The steel wire rod prices are reported on a monthly basis in U.S. dollars per metric ton (MT). *See* Calculation Memorandum at Attachment 6.

To determine the price that constitutes adequate remuneration, we first converted the monthly MEPS prices for steel wire rod from U.S. dollars to RMB using U.S. dollar to RMB exchange rates, as reported by the Federal Reserve Statistical Release. Because Ningbo Jiulong's wire rod purchases were reported as one aggregate number comprising all purchases made during the POI, we averaged the monthly MEPS prices and the monthly ''Steel Business Briefing'' prices for steel wire rod to calculate an annual benchmark price for 2008.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included a freight cost that would be incurred based on the average cost of shipping wire rod from South America and Europe. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. See Calculation Memorandum at Attachment 6. Comparing the resulting annual benchmark unit price to the unit price paid by Ningbo Jiulong for wire rod during the POI that we found to be produced by an ''authority,'' we determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and what the respondent paid for wire rod. *See* 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC has provided information regarding end uses for wire rod. *See* GOC questionnaire response at 26 and Exhibit-O–II–D.2. The GOC stated that the end uses would relate to the type of industry involved as a direct purchaser of the input. *See* GQR at Exhibit 33. While the listed industries may represent numerous products, section 771(5A)(D)(iii)(I) of the Act directs the Department to conduct its analysis on an enterprise or industry basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act. *See also* LWRP Decision Memorandum at Comment 7. Therefore, we determine that a countervailable subsidy was conferred on Ningbo Jiulong through the GOC's provision of wire rod for LTAR. To calculate the subsidy, we took the difference between the delivered world market price and the price Ningbo Jiulong paid for wire rod produced by the government during the POI. *See* 19 CFR 351.524(c). We divided this by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 3.65 percent ad valorem for Ningbo Jiulong.

C. *Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment*

Ningbo Jiulong reported receiving an income tax credit on the tax return it filed during the POI under the ''Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment'' program. According to the GOC, this program was established on July 1, 1999, pursuant to ''Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation.'' The GOC states that under the program, a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous tax year. The GOC further states that pursuant to the ''Circular on Relevant Issues with Respect to Ceasing Implementation Of Income Tax Credit To Purchase Of Domestically Produced Equipment by Enterprises,'' the program has been terminated, effective January 1, 2008.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1), respectively. We further find that this program is specific under section 771(5A)(C) of the Act because the receipt of the tax savings is contingent upon the use of domestic equipment over imported equipment, and therefore constitutes an import substitution subsidy. To calculate the benefit, we used the amount of tax savings Ningbo Jiulong received on the tax return it filed during the POI, pursuant to 19 CFR 351.509(a)(2)(b). In accordance with 19 CFR 351.509(c), we have allocated benefits received under the program to the POI.

To calculate the net subsidy rate, we divided the benefit by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 1.68 percent *ad valorem* for Ningbo Jiulong.

II. Programs Discovered During the Course of the Investigation and Preliminarily Found to be Countervailable

A. *Export Grant 2008*

Ningbo Jiulong reported that it received benefits under the ''Export Grant 2008'' program from the State Tax Authority Ningbo City during the POI. According to Ningbo Jiulong, the grant is received on a monthly basis, at a rate of 0.03 RMB for each US$1 of exports during that month. Based on information on the record, the Department finds that this grant constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grant, in accordance with 19 CFR 351.504(a). Because the grant appears to be contingent on export performance, the Department preliminarily determines that it is specific within the meaning of section 771(5A)(B) of the Act.

Because grants under this program are not exceptional and the company can expect to receive them on an ongoing basis, we are treating them as recurring, under 19 CFR 351.524(c)(2) and allocating the grants received to the year of receipt. To calculate the net subsidy rate, we first summed all of the grants received by Ningbo Jiulong during the POI and then divided this amount by Ningbo Jiulong's total export sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.09 percent *ad valorem* for Ningbo Jiulong.

B. *Jiulong Lake Town Grant 2008*

In its response to the supplemental questionnaire, Ningbo Jiulong reported that this grant is a conglomeration of four separate awards provided by Ningbo Zhenhai Jiulong Lake Town Government and received by Ningbo Jiulong during the POI: 1) the Technical Reform Input Award, which is awarded to only one company; 2) the Advancement in Sales Award, which is awarded to three companies; 3) the District Model Enterprise for Environmental Protection award, which is awarded to only one company; and 4) the Advanced Enterprise in Energy-Saving award, which is awarded to three companies. Based on information

on the record, the Department finds that these awards constitute financial contributions in the form of grants, within the meaning of section 771(5)(D)(i) of the Act. The benefit received is equal to the amount of the grants, in accordance with 19 CFR 351.504(a). Because it appears that only a limited number of companies received each grant, the Department preliminarily determines that these grants are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), we have performed the ''0.5 percent test,'' and, because the benefits are less than 0.5 percent of total sales, we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided sum of all the grants under this program received during the POI by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.04 percent ad valorem for Ningbo Jiulong.

C. Energy Saving Grant 2008

Ningbo Jiulong reported receiving benefits under the ''Energy Saving Grant 2008'' program during the POI. According to Ningbo Jiulong, these grants are provided by the Ningbo Zhenhai Development and Reform Bureau as an award for investment in energy-saving projects. The amount of the grant is calculated as a percentage of the total investment made in energy-saving projects. Based on information on the record, the Department finds that this grant constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act. There is a benefit equal to the amount of the grant in accordance with 19 CFR 351.504(a). Ningbo Jiulong reported that, during the POI, only 19 companies received grants for investments made in energy-saving projects under this program. Because these grants were provided to a limited number of enterprises, the Department preliminarily determines this program to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the ''0.5 percent test,'' we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total sales of subject merchandise during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.14 percent ad valorem for Ningbo Jiulong.

D. *Foreign Trade Grant 2008*

Ningbo Jiulong reported that it received a grant under the ''Foreign Trade Grant 2008'' program during the POI. Ningbo Jiulong states that the grant was a flat award amount, available after an eligible firm reached a minimum value of exports. Based on information on the record, the Department finds that a financial contribution was provided in the form of a grant within the meaning of section 771(D)(i) of the Act. A benefit exists in the amount of the grant, within the meaning of 19 CFR 351.504(a). Because the awarding of the grant is contingent upon a company reaching a minimum level of export sales, the Department preliminarily determines that this grant is an export subsidy and therefore specific under section 771(5A)(B) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(a) and (c), and as a result of the ''0.5 percent test'' performed with Ningbo Jiulong's total exports, we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total export sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.01 percent *ad valorem* for Ningbo Jiulong.

E. *Famous Brand Grant 2008*

Ningbo Jiulong reported receiving grants under the ''Famous Brand Grant 2008'' program from the Bureau of Quality and Technical Supervision during the POI. According to Ningbo Jiulong, eligibility for the receipt of benefits under the program is contingent on a company owning a Ningbo famous brand and being located in Zhenhai District, and four companies received grants under this program. Based on information on the record, the Department finds that this program constitutes a financial contribution in the form of a grant in accordance with section 771(5)(D)(i) of the Act. The amount of the benefit is equal to the amount of the grant, according to 19 CFR 351.504(a). We preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the grant, whether considered on an enterprise or industry basis, are limited in number. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the ''0.5 percent test,'' we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the benefit by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.02 percent *ad valorem* for Ningbo Jiulong.

F. *Innovative Small- and Medium-Sized Enterprise Grant 2008*

Ningbo Jiulong identified itself as a recipient of the ''Innovative Small-and Medium-Sized Enterprise Grant 2008'' from the Ningbo Zhenhai Development and Reform Bureau during the POI. Criteria for receipt of benefits under this program include minimum sales and sales growth levels, as well as ownership of certain brands and technologies. Based on information on the record, the Department finds that this grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act. The amount of the benefit is equal to the amount of the grant, which is the same amount for all companies that meet the eligibility criteria of the program. Because only nine companies received the grant during the POI, the Department preliminarily determines that the grant is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because it is provided to a group of enterprises that is limited in number. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the ''0.5 percent test,'' we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.04 percent *ad valorem* for Ningbo Jiulong.

G. *Water Fund Refund/Exemption 2008*

Ningbo Jiulong reported that it received benefits under the ''Water Fund Refund/Exemption 2008'' program during the POI, and that receipt of these benefits was contingent on it being an exporting company. From January to July 2008, Ningbo Jiulong reports that the amount it paid into the water fund, which is a percentage of its total sales, was refunded to it. From August to December 2008, Ningbo Jiulong reports that it was exempted from the water fund payments normally required. For funds received between January and July of 2008, there is a financial contribution within the meaning of section 771(5)(D)(i) of the Act. A benefit exists in the amount of the refund, in accordance with 19 CFR 351.504(a). For the amount of the water fund that Ningbo Jiulong was exempted from paying, a financial contribution exists within the meaning of section 771(5)(D)(ii) of the Act. The benefit is equal to the amount of the water fund payments that Ningbo Jiulong would

have otherwise made, in accordance with 19 CFR 351.509(a)(1). Because eligibility for the receipt of benefits under this program is contingent on the recipient being an exporting company, the program is specific within the meaning of section 771(5A)(B) of the Act.

Because grants under this program are received on a monthly basis, we are treating them as recurring, and allocating the grants received during the POI to the year of receipt. To calculate the net subsidy rate, we added together the water fund refunds received for January through July 2008 and the value of the water fund payments from which Ningbo Jiulong was exempt for August through December 2008. We then divided the total benefit by Ningbo Jiulong's total export sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.14 percent *ad valorem* for Ningbo Jiulong.

H. *Product Quality Grant*

In Ningbo Jiulong's original questionnaire response, it provided an exhibit in Chinese identifying fifteen grant programs from which it had received benefits. However, two of those programs were not listed in the English translation of that document. In the supplemental questionnaire issued by the Department, we asked Ningbo Jiulong to provide an exact, line-by-line translation of the original exhibit. Ningbo Jiulong provided this full translation in its supplemental questionnaire response, which identified the ''Product Quality Grant'' program as a program under which it received benefits during the POI. Based on the facts available to the Department, we preliminarily conclude that the ''Product Quality Grant'' constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and that a benefit is received in the amount of the grant in accordance with 19 CFR 351.504(a). Because neither the GOC nor Ningbo Jiulong provided information about the number or types of recipients of grants under this program, we must rely on facts available pursuant to section 776(a)(1) and (a)(2)(B) of the Act. Further, because we find that the respondents should have been able to provide this information, we preliminarily determine that they failed to act to the best of their abilities. Accordingly, we are making an adverse inference under section 776(b) of the Act, in applying the facts otherwise available concerning this program. On this basis, we preliminarily determine the Product Quality Grant to be specific. As such, it provides a countervailable subsidy within the meaning of section 771(5) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the ''0.5 percent test,'' we have allocated the grant received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.02 percent *ad valorem* for Ningbo Jiulong.

III. Program Discovered During the Course of the Investigation and Preliminarily Found To Be Not Countervailable

Cleaning Production Grant 2008

Ningbo Jiulong reported that it received benefits under the ''Cleaning Production Grant 2008'' program from the Ningbo Zhenhai Environment Protection Bureau during the POI. The grant is provided to organizations that carry out energy-saving and environmental protection projects. Information in the record shows that grants under this program are provided to a large number of businesses and organizations across a wide range of fields, including numerous and diverse industries ranging from appliance manufacturers to garment makers and chemical companies, as well as schools, district governments, hospitals, restaurants and a number of individuals. *See* Ningbo Jiulong's September 21, 2009 supplemental questionnaire response. Based on the value of the grant that Ningbo Jiulong received, and the total amount of grants provided, Ningbo Jiulong does not appear to have received a predominant or disproportionate share of the grants distributed. As such, we preliminarily determine that Ningbo Jiulong's receipt of the Cleaning Production Grant 2008 is not specific in accordance with section 771(5A)(D)(iii)(I), (II) and (III) of the Act and is therefore not countervailable. We will continue to gather information about this program for the final determination.

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that Ningbo Jiulong did not apply for or receive benefits during the POI under the programs listed below. We will examine these programs and Ningbo Jiulong's reported non-use of these programs further through supplemental questionnaires issued after this preliminary determination and during verification.

A. *Government Provision of Steel Bar for Less than Adequate Remuneration*
B. *Government Provision of Steel Plate for Less than Adequate Remuneration*
C. *Government Provision of Land-Use Rights to SOEs for Less than Adequate Remuneration*
D. *''Two Free, Three Half'' Program*
E. *Reduced Income Tax Rates for Export-Oriented FIEs*
F. *Preferential Income Tax Policy for Enterprises in the Northeast Region*
G. *Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China*
H. *Tax Subsidies for FIES in Specially Designated Geographic Areas*
I. *Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs*
J. *Income Tax Credits for FIEs Purchasing Domestically Produced Equipment*
K. *Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises*
L. *Import Tariff and Value Added Tax (VAT) Exemptions for Encouraged Industries Importing Equipment for Domestic Operations*
M. *VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund*
N. *Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program*
O. *Grants to ''Third-Line'' Military Enterprises*
P. *Guangdong and Zhejiang Province Program to Rebate Antidumping Fees*
Q. *The State Key Technology Project Fund*
R. *Export Incentive Payments Characterized as ''VAT Rebates''*
S. *VAT Refunds for FIEs Purchasing Domestically-Produced Equipment*

V. Program for Which We Preliminarily Determine Ningbo Jiulong To Be Ineligible

Petitioners have alleged the existence of certain provincial/municipal programs that are potentially available to producers of certain steel grating. The Department initiated an investigation into these programs prior to respondent selection. Because Ningbo Jiulong and all of its production facilities are located in the city of Ningbo, Zhejiang Province, and not in the provinces or municipalities that administer these programs, we preliminarily determine that Ningbo Jiulong is ineligible to receive benefits under these programs.

A. *Liaoning Province ''Five Points, One Line'' Program*
B. *Guangzhou City Famous Exports*

Brands

C. *Grants to Companies for ''Outward Expansion'' in Guangdong Province*

VI. Programs Preliminarily Determined Not to Provide Benefits During the POI

Ningbo Jiulong reported that it received grants under several additional programs in years prior to the POI. We requested, and Ningbo Jiulong provided, its total sales and total export values for the years in which these grants were received. We performed the ''0.5 percent test,'' as prescribed under 19 CFR 351.524(b)(2), for the years in which these grants were received. Because these grants were less than 0.5 percent of their relevant sales, the Department has determined that these grants would have been expensed in the year of receipt. Therefore, we preliminarily determine that grants which Ningbo Jiulong reported receiving under the programs below did not benefit Ningbo Jiulong's production, sale, or exports of certain steel grating during the POI. *See* Calculation Memorandum at Attachment 10.

A. *Technical Upgrading Grant 2005*
B. *Power Engine Grant 2005*
C. *Technical Innovation Grant 2006*
D. *Export Grant 2006*
E. *Technical Upgrading Grant 2007*
F. *Export Grant 2007*

VII.Program for Which We Need Additional Information

GOC Provision of Electricity for Less than Adequate Remuneration

The Department initiated on the GOC's provision of electricity for LTAR in the New Subsidy Initiation Memorandum on September 21, 2009. The GOC and Ningbo Jiulong reported in their respective new subsidy allegation questionnaire responses that no benefits were provided under the program. According to the GOC, ''no benefit is conferred on end users of electricity, which is provided as generally available infrastructure to all user types.'' *See* the GOC's October 15, 2009 New Subsidy Allegation Questionnaire Response at page 8. Because this was the GOC's initial questionnaire response regarding the new subsidy allegations, there has not been sufficient time for the Department to issue a supplemental questionnaire to the GOC regarding the provision of electricity. Furthermore, the GOC reported that it was still in the process of gathering key information with regard to how Zhejiang Province accounts for its cost elements; how cost increases are factored into the retail price for electricity; and, how these final price increases are allocated across the province and across tariff end-user categories. *See Id.* at 12. Without this information, the Department is unable to determine whether a benefit was provided to Ningbo Jiulong from the provision of electricity. Therefore, the Department will request from the GOC the additional information needed to complete our analysis of whether this program provides a countervailable subsidy to Ningbo Jiulong.

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for Ningbo Jiulong, the only producer/exporter of the subject merchandise individually investigated. Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. However, the all others rate may not include zero and *de minimis* rates or any rates based solely on the facts available.[1] In this investigation, Ningbo Jiulong's rate meets the criteria for the all others rate. Therefore, we have assigned Ningbo Jiulong's rate to all other producers and exporters. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Manufacturer/Exporter	Net Subsidy Rate
Ningbo Jiulong Machinery Manufacturing Co., Ltd.	7.44 percent ad valorem
All Others	7.44 percent ad valorem

In accordance with section 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of certain steel grating from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, case briefs for this investigation must be submitted no later than 50 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written

[1] Pursuant to 19 CFR 351.204(d)(3), the Department must also exclude the countervailable subsidy rate calculated for a voluntary respondent. In this investigation we had no producers or exporters request to be voluntary respondents.

request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: October 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping/Countervailing Duty Operations.

[FR Doc. E9–26318 Filed 11–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS46

Pacific Coast Groundfish Fishery; Intent To Prepare an Environmental Impact Statement for the 2011–2012 Biennial Harvest Specifications and Management Measures

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); request for written comments; notice of public scoping meetings.

SUMMARY: NMFS and the Pacific Fishery Management Council (Council) announce their intent to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) to analyze the impacts on the human, biological, and physical environment of setting harvest specifications and management measures for 2011 and 2012, pursuant to the Pacific Coast Groundfish Fishery Management Plan.

DATES: Public scoping will be conducted through regular meetings of the Pacific Fishery Management Council and its advisory bodies starting with the October 31–November 5, 2009, Council meeting and continuing through the June 12–17, 2010, meeting. Written comments will be accepted through December 3, 2009 (*see* **SUPPLEMENTARY INFORMATION**). Written, faxed or e-mailed comments must be received by 5 p.m. Pacific Daylight time on December 3, 2009.

ADDRESSES: You may submit comments, on issues and alternatives, identified by 0648–XS46 by any of the following methods:

- *E-mail: GroundfishSpex2011_12.nwr@noaa.gov.* Include 0648–XS46 and enter *AScoping Comments@* in the subject line of the message.
- *Fax:* 503–820–2299, attention: John DeVore.
- *Mail:* Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 101, Portland, OR 97220, attention: John DeVore.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council, *phone:* 503–820–2280, *fax:* 503–820–2299 and *e-mail: john.devore@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.gpoaccess.gov/fr/index/html.*

Background and Need for Agency Action

There are more than 90 species managed under the Pacific Coast Groundfish Fishery Management Plan (groundfish FMP), seven of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in non-groundfish fisheries, most notably, the non-groundfish trawl fisheries for pink shrimp, ridgeback prawns, California halibut, and sea cucumber.

The proposed action is needed to manage Pacific Coast groundfish fisheries consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) including preventing overfishing and ensuring that groundfish stocks are maintained at, or restored to, sizes and structures that will produce the highest net benefit to the nation, while balancing environmental and social values.

The Proposed Action

Using the ''best available science,'' the proposed action is to establish harvest specifications consistent with an ''annual catch limits framework'' for calendar years 2011 and 2012 for species and species' complexes managed under the groundfish FMP and to establish management measures that constrain total fishing mortality to these specified Annual Catch Limits (ACLs). The specifications must be consistent with requirements of the MSA including preventing overfishing and, for stocks that have been declared overfished, setting ACLs appropriately to return stock biomass to the maximum sustainable yield (MSY) level or MSY proxy level. Because seven Pacific Coast groundfish species are currently overfished and managed under rebuilding plans, ACLs must be set consistent with the rebuilding plans and the framework described in MSA section 304(e) and the groundfish FMP, which requires overfished stocks to be rebuilt to the MSY biomass in a time period that is as short as possible, taking into account the status and biology of the overfished stocks, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem. To address this mandate, changes to rebuilding plans may be made as part of this biennial process. In addition, based on the 2009 stock assessment, the Secretary of Commerce may declare that petrale sole (*Eopsetta jordani*) is overfished, in which case the Council would develop a rebuilding plan for this stock and amend the groundfish FMP accordingly. Petrale sole ACLs for 2011 and 2012 would be set consistent with any adopted rebuilding plan. The scope of the proposed action may also include adopting the rebuilding plan and amending the groundfish FMP.

Annual catch limits (ACLs), or harvest specifications, must be consistent with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act and pursuant to revised guidelines, which were published by NMFS on January 16, 2009 (74 FR 3178). The Council is concurrently developing an amendment to the groundfish FMP (Amendment 23) to make the necessary revisions so that the groundfish FMP's harvest management framework is consistent with these revised guidelines. The 2011–2012 annual catch limits would be consistent with the revised harvest management framework.

The Council adopted fixed allocations of catch opportunity between the limited entry groundfish fishery and all other groundfish fishery sectors for 25 groundfish stocks in Amendment 21 to the groundfish FMP, which is pending submission for review by the Secretary of Commerce. There are also existing fixed allocations for sablefish (*Anaplopoma fimbria*) north of 36° N. latitude and Pacific whiting (*Merluccius productus*). Additional allocations may be determined as part of the proposed

action in support of new management tools for the limited entry trawl sector (*see* below).

The proposed action also establishes management measures designed to maintain total catch at or below ACLs. Management measures may be established for each year of the 2-year period or shorter periods, and the types of measures usually differ among groundfish fishery sectors. In 2009 the Council adopted Amendment 20 to the groundfish FMP, which would change the types of management measures used for the groundfish limited entry trawl sector. A single shorebased trawl sector would be managed with individual fishing quotas (IFQ) while two at-sea Pacific whiting sectors (catcher vessels delivering to mothership processors and catcher-processors) would be managed under cooperatives. Amendment 20 to the groundfish FMP is pending submission to the agency for review. If approved, NMFS intends that the amendment and pursuant regulations would be implemented in time for use beginning in 2011. However, under the proposed action current catch control tools (2-month cumulative trip limits, seasons, and quotas) will be evaluated for the limited entry trawl sector as an alternative in the event Amendment 20 is not approved and implemented by 2011.

These harvest specifications include fish caught in state ocean waters (zero to three nautical miles [nm] offshore) as well as fish caught in the U.S. exclusive economic zone (3 to 200 nm offshore). Regulations implementing management measures consistent with the harvest specifications would need to be in place by January 1, 2011, as the next 2-year period begins on January 1, 2011. In the unlikely event that new harvest specifications and management measures are not approved by the end of 2010 and effective on January 1, 2011, the harvest specifications and management measures in place for 2010 would remain in place until the effective date of the new harvest specifications and management measures. The EIS analysis described in this document would consider a similar scenario in the unlikely event that the effective date of the harvest specifications and management measures for 2011–2012 are delayed beyond January 1, 2013.

Alternatives

NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS, which address the purpose and need for agency action. A preliminary set of alternatives will be developed during the October 31–November 5, 2009, Council meeting. Alternatives are structured around a range of ABCs/ACLs for fishery management units (stocks or stock complexes). This range of ABCs/ACLs will be consistent with the annual catch limit specification framework adopted under Amendment 23, discussed above.

Based on the range of ABCs/ACLs alternatives adopted at the November 2009, Council meeting, the Council is scheduled to choose a preliminary preferred ABCs/ACLs alternative at their April 10–15, 2010, meeting; a range of alternative management measures would also be identified at that time, which would maintain total harvest mortality (across all fisheries intercepting groundfish) to within the preferred ACLs. The Council is then scheduled to take final action to choose a preferred alternative that includes ABCs/ACLs and associated management measures at their June 12–17, 2010, meeting.

Restrictive management measures intended to rebuild overfished species have been adopted and implemented over the past several years for most commercial and recreational fishing sectors. Management measures intended to control the rate at which different groundfish species or species groups are taken in the fisheries include trip limits, bag limits, size limits, time/area closures, and gear restrictions. Large area closures, called Groundfish Conservation Areas (GCAs) or Rockfish Conservation Areas (RCAs), intended to reduce bycatch of overfished species, were first implemented in late 2002. A second important type of measure used to manage groundfish is the cumulative landing limit. Cumulative landing limits restrict the total weight of fish by species or species group that any one vessel may land during the limit period, which is normally 2 months. Different cumulative landing limits are established for areas north and south of 40*10′ N. latitude (near Cape Mendocino, California) and for limited entry trawl, limited entry fixed gear, and open access fishery participants. As discussed above, under Amendment 20 Individual Fishing Quotas would replace cumulative trip limits as the primary catch control tool to manage a single sector that includes both limited entry trawl vessels targeting Pacific whiting and vessels targeting other groundfish species and delivered to shoreside processors. Under the amendment catcher vessels targeting Pacific whiting and delivering at-sea to mothership processors would be managed under a system of cooperatives where NMFS will establish new permits and endorsements, review and approve co-op agreements, and allocate a percent of this sector's harvest allocation to each co-op. The Pacific whiting catcher-processor sector currently operates as a voluntary co-op; Amendment 20 would create a permit endorsement to limit participation in this sector. These new catch control measures will be evaluated as part of the proposed action along with current measures. Final determination of which types of measures will apply in 2011 and 2012 will depend on whether Amendment 20 is approved and implemented by January 1, 2011.

Preliminary Identification of Environmental Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the EIS.

Public scoping will occur throughout the Council's decision-making process. All decisions during the Council process benefit from written and oral public comments delivered prior to or during the Council meeting. These public comments are considered integral to scoping for developing this EIS. A preliminary range of 2011 and 2012 annual catch limits and management measures will be decided at the October 31–November 5, 2009, Council meeting in Costa Mesa, California, at the Hilton Orange County/Costa Mesa, 3050 Bristol St., Costa Mesa, CA 92626(714–540–7000). The Council is expected to adopt preliminary preferred ABCs/ACLs alternatives and refine the range of management measures at their April 10–15, 2010, meeting in Portland, Oregon, at the Sheraton Portland Airport Hotel, 8235 NE Airport Way Portland, OR 97220 (503–281–2500). The Council is expected to decide final 2011 and 2012 annual catch limits, further refine the range of management measures, and decide their final preferred alternative at their June 12–17, 2010, meeting at the Crowne Plaza Mid Peninsula, 1221 Chess Drive, Foster City, CA 94404 (800–227–6963 or 650–570–5700). Public comment may be made under the agenda items when the Council will consider these proposed actions. The agendas for these meetings will be available from the Council Web site or by request from the Council office in advance of the meeting (*see* **ADDRESSES**). Written comments on the scope of issues and alternatives may also be submitted as described under **ADDRESSES.**

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

Dated: October 27, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–26223 Filed 11–2–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–822]

Polyethylene Retail Carrier Bags from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that polyethylene retail carrier bags (PRCBs) from Indonesia are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

Pursuant to requests from the respondents, we are postponing by 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

EFFECTIVE DATE: November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0410 or (202) 482–5760 respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2009, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners) filed an antidumping petition concerning imports of PRCBs from Indonesia. See the Petition for the Imposition of Antidumping and Countervailing Duties on Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam, dated March 31, 2009.

On April 20, 2009, the Department initiated the antidumping duty investigation on PRCBs from Indonesia. *See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (April 27, 2009) (*Initiation Notice*).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of publication of the *Initiation Notice. See Initiation Notice*, 74 FR at 19049. See also Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997). We received no comments from interested parties concerning product coverage. The Department also set aside a period of time for parties to comment on product characteristics for use in the antidumping duty questionnaire. *See Initiation Notice*, 74 FR at 19050. On May 11, 2009, we received comments from the petitioners. After reviewing the petitioners' comments, we have adopted the characteristics and hierarchy as explained in the ''Product Comparisons'' section of this notice, below.

On May 29, 2009, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of PRCBs from Indonesia are materially injuring the U.S. industry, and the ITC notified the Department of its finding. *See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam; Determinations*, Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Preliminary), 74 FR 25771 (May 29, 2009).

On May 21, 2009, we selected P.T. Sido Bangun (SBI) and P.T. Super Exim Sari Ltd. and P.T. Super Makmur (collectively SESSM) as mandatory respondents in this investigation. See the ''Selection of Respondents'' section of this notice, below.

On May 26, 2009, we issued the antidumping questionnaire to SBI and SESSM. On July 20, 2009, we received a questionnaire response from SBI. On July 22, 2009, we received a questionnaire response from SESSM. We issued supplemental questionnaires to the respondents and received responses from both respondents.

On July 22, 2009, based on a timely request from the petitioners, we extended the deadline for alleging targeted dumping.

On July 30, 2009, the petitioner alleged that SBI and SESSM made comparison–market sales of PRCBs at prices below the cost of production (COP) during the period of investigation (POI). On August 14, 2009, we initiated an investigation to determine whether the respondents made comparison–market sales of PRCBs at prices below the COP during the POI. See the ''Cost of Production'' section of this notice, below. In letters dated August 14, 2009, we requested that the respondents respond to the COP section of the antidumping questionnaire. On September 8, 2009, we received the cost response from SESSM and on September 11, 2009, we received the cost response from SBI.

On August 7, 2009, the petitioners filed an allegation of targeted dumping by SBI and SESSM. See the ''Targeted–Dumping Allegation'' section below.

On August 13, 2009, the petitioners requested that the Department postpone its preliminary determination by 50 days. In accordance with section 733(c)(1)(A) of the Act, we postponed our preliminary determination by 50 days. *See Postponement of Preliminary Determination of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam*, 74 FR 42229 (August 21, 2009).

On September 17, 2009, the petitioners requested that, in the event of a negative preliminary determination in this investigation, the Department postpone the final determination in accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i). The petitioners did not specify the number of days by which to postpone the final determination. On September 18, 2009, and September 23, 2009, SBI and SESSM requested respectively that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. For further discussion, see the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice, below.

On October 14, 2009, and on October 21, 2009, the petitioners submitted comments for consideration in the preliminary determination.

On October 21, 2009, SESSM submitted new sales databases which it said were necessary to correct ''data entry errors in product code names, work order numbers, payment dates, gross unit prices and quantities sold, cylinder revenue, per–unit conversion factors and other individual items.'' See SESSM's submission dated October 21,

2009, at page 3. SESSM also submitted a new cost database which it said was necessary to ''reflect corrections to resin and overhead cost calculations and certain production quantities.'' *Id.* We have not used these revised databases in this preliminary determination because they were submitted too late for us to evaluate and analyze in time for this preliminary determination and very little explanation was provided as to the extent and reasons for the changes. We will analyze and consider these databases for the final determination.

Period of Investigation

The POI is January 1, 2008, through December 31, 2008. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2009. See 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise subject to this investigation is PRCBs, which also may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. The data on the record indicates that there are more than ten potential producers or exporters from Indonesia that exported the subject merchandise to the United States during the POI. In the *Initiation Notice* we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under HTSUS number 3923.21.0085 during the POI and we invited comments on CBP data and selection of respondents for individual examination. See *Initiation Notice*, 74 FR at 19054.

On April 27, 2009, we released the CBP data to all parties with access to information protected by administrative protective order. Based on our review of the CBP data and our consideration of the comments we received from the petitioners on May 7, 2009, we determined that we had the resources to examine two companies. Accordingly, we selected SBI and SESSM as mandatory respondents. These companies are the two major producers/exporters of subject merchandise that account for the largest volume of subject merchandise during the POI that we can reasonably examine in accordance with the statute. See Memorandum to John M. Andersen entitled ''Antidumping Duty Investigation on Polyethylene Retail Carrier Bags from Indonesia Selection of Respondents'' dated May 21, 2009.

Targeted–Dumping Allegation

The statute allows the Department to employ the average–to-transaction margin–calculation methodology under the following circumstances: 1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; 2) the Department explains why such differences cannot be taken into account using the average–to-average or transaction–to-transaction methodology. See section 777A(d)(1)(B) of the Act.

On August 7, 2009, the petitioners submitted an allegation of targeted dumping with respect to SBI and SESSM and asserted that the Department should apply the average–to-transaction methodology in calculating the margin for SBI and SESSM. In their allegation, the petitioners assert that there are patterns of export prices (EPs) for comparable merchandise that differ significantly among purchasers, regions, and time periods for SBI and among time periods for SESSM. The petitioners relied on the Department's targeted–dumping test in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007) (CFS); the petitioners also made their allegations using the Department's test in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (collectively, *Nails*).

Because our analysis includes business–proprietary information, for a full discussion see Memoranda to John M. Anderson entitled ''Less–Than-Fair–Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Targeted Dumping PT Sido Bangun Indonesia,'' dated October 27, 2009 (SBI Targeted–Dumping Memo) and ''Less–Than-Fair–Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Targeted Dumping P.T. Super Exim Sari Ltd.,'' dated October 27, 2009 (SESSM Targeted–Dumping Memo) (collectively Targeted–Dumping Memoranda).

In our letter to the petitioners dated September 4, 2009, we stated that the petitioners' allegation using the CFS methodology lacked certain analysis for appropriately establishing the significance of differences in pricing patterns between targeted and non–targeted sales. In that letter we also stated that, because the methodology in *Nails* is our current targeted–dumping methodology, we planned to evaluate any targeted–dumping allegation concerning SBI and SESSM only in the context of the determination we made in *Nails*. We also identified certain ministerial errors we had found in the computer program that was used in *Nails* and alerted the petitioners that they could re–submit their allegation which incorporates these corrections. The petitioners did not submit a revised

allegation of targeted dumping with respect to either respondent.

On October 1, 2009, the petitioners submitted comments for consideration in the preliminary determination. Specifically, the petitioners' comments relate to the issue of determining the proper rounding of prices in the targeting–dumping test and the issue of application of the average–to-transaction comparison method to all sales (not just to targeted sales) in an effort to unmask dumping associated with targeted sales.

A. Targeted–Dumping Test

After correcting certain ministerial errors mentioned above and described in detail in our September 4, 2009, letter, we conducted customer, regional, and time–period targeted–dumping analyses for SBI and time–period targeted–dumping analysis for SESSM using the methodology we adopted in Nails and used most recently in *Certain New Pneumatic Off–The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).

The methodology we employed involves a two–stage test; the first stage addresses the pattern requirement and the second stage addresses the significant–difference requirement. See section 777A(d)(1)(B)(i) of the Act and *Nails*. In this test we made all price comparisons on the basis of identical merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for the customer, region, and time–period targeted–dumping allegations. We based all of our targeted–dumping calculations on the U.S. net price which we determined for U.S. sales by SBI and SESSM in our standard margin calculations. For further discussion of the test and the results, see the Targeted–Dumping Memoranda.

As a result of our analysis, we preliminarily determine that there is a pattern of EPs for comparable merchandise that differ significantly among certain customers and time periods for SBI and among time periods for SESSM in accordance with section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails*.

B. Price–Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the normal value to EPs of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs cannot be taken into account using the average–to-average methodology. As described above, we have preliminarily determined that, with respect to sales by SBI for certain customers or time–periods and sales by SESSM for a certain time period, there was a pattern of prices that differ significantly. We find that these differences cannot be taken into account using the average–to-average methodology because the average–to-average methodology conceals differences in the patterns of prices between the targeted and non–targeted groups by averaging low–priced sales to the targeted group with high–priced sales to the non–targeted group.

In December 2008, the Department withdrew the regulation concerning targeted dumping. See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 72 FR 74930 (December 10, 2008). The withdrawn targeted–dumping regulation normally would have limited the application of the average–to-transaction methodology to just those sales that constitute targeted dumping. In light of the withdrawn regulation and the petitioners' comments in this case, we have considered the following options:

1. Apply the average–to-transaction methodology just to sales found to be targeted as the withdrawn regulation directed and, consistent with our average–to-transaction practice, do not offset any margins found on these transactions.

2. Apply the average–to-transaction methodology to all sales to the customer or time period found to be targeted (not just those specific sales found to be targeted) and, consistent with our average–to-transaction practice, do not offset any margins found on these transactions.

3. Apply the average–to-transaction methodology to all sales by SBI and SESSM and, consistent with our average–to-transaction practice, do not offset any margins found on these transactions.

The Department received comments on the price–comparison methodology in response to the *Withdrawal of Regulation*. Because consideration of those comments is still underway, for purposes of this preliminary determination and consistent with our practice in the *Nails* investigations, we have applied the average–to-transaction methodology to any targeted sales and applied the average–to-average methodology to the remaining non–targeted sales. When calculating the weighted–average margin, we combined the margin we calculated for the targeted sales with the margin we calculated for the non–targeted sales without offsetting any margins found among the targeted sales. See Targeted–Dumping Memoranda.

We invite interested parties to comment on the issue of the appropriate price–comparison methodology to use for the final determination in this investigation. Further, given the timing and complexity of the petitioners' October 1, 2009, comments, we intend to address such comments fully in the context of the final determination.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long–standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and the accompanying Issues and Decision Memorandum (I&D Memo) at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and the accompanying I&D Memo at Comment 2.

SESSM reported that the date of sale is the earlier date of the sales invoice date or the date of shipment for both home–market and U.S. sales. Based on record evidence, we preliminarily determine that it is appropriate to use the earlier date of the sales invoice date or the shipment date as the date of sale for SESSM's home–market and U.S. sales. Consistent with our practice, we used the earlier date of the sales invoice date or the shipment date as the date of sale for SESSM's home–market and U.S. sales.

SBI reported the date of sale as the invoice date. Pursuant to 19 CFR 351.401(i), we used the invoice date as the date of sale for SBI's comparison–market and U.S. sales because SBI's response demonstrated that the material

terms of sale were established at the date of invoice.

Fair–Value Comparisons

To determine whether sales of PRCBs to the United States by SBI and SESSM were made at LTFV during the POI, we compared EP to normal value, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI–wide weighted–average EPs except for those sales discussed above in the ''Targeted–Dumping Allegation'' section of this notice.

Product Comparisons

We have taken into account the comments that were submitted by the interested parties concerning product–comparison criteria. In accordance with section 771(16) of the Act, all products produced by the respondents that are covered by the description in the ''Scope of the Investigation'' section, above, and sold in the respective comparison markets during the POI are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We have relied on thirteen criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product: quality, bag type, length, width, gusset, thickness, percentage of high–density polyethylene resin, percentage of low–density polyethylene resin, percentage of low linear–density polyethylene resin, percentage of color concentrate, percentage of ink coverage, number of ink colors, and number of sides printed. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade for comparison to U.S. sales, we matched U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Export Price

In accordance with section 772(a) of the Act, we used EP for SBI's U.S. sales and SESSM's U.S. sales because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI–wide weighted–average EPs to the weighted–average normal values.

We calculated EP based on the packed F.O.B., C&F, or C.F.R. price to unaffiliated purchasers in the United States. We made deductions, as appropriate, for discounts. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. See the October 27, 2009, preliminary analysis memoranda for SBI and SESSM for additional information.

SESSM received freight revenue from the customer for certain U.S. sales. It is the Department's practice to treat such revenues as an offset to the specific expenses for which they were intended to compensate. *See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) (*OJ Brazil*), and the accompanying I&D Memo at Comment 7, and *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009) (*PRC Bags*), and the accompanying I&D Memo at Comment 6. Accordingly, we have used SESSM's freight revenue as an offset to its international freight expenses.

In their October 14, 2009, pre–preliminary comments, the petitioners argue that we should not make an adjustment to U.S. price for interest revenue on the grounds that SBI did not demonstrate that the customer was liable for interest charges nor did it demonstrate that the customer actually paid the interest charges. We have made the adjustment because we have not yet asked SBI to make such demonstrations. We intend to examine this issue further at verification and will consider the issue in the context of the final determination.

Normal Value

A. Home–Market Viability and Comparison–Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home–market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home–market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. See section 773(a)(1)(B) of the Act. Based on this comparison, we determined that SESSM had a viable home market during the POI but SBI did not. Consequently, with respect to SESSM, we based normal value on home–market sales in accordance with section 773(a)(1)(B) of the Act. With respect to SBI, we based normal value on third–country sales in accordance with section 773(a)(1)(C) of the Act. We selected SBI's largest third–country market, the United Kingdom, as the comparison market because it was the only comparison market that was viable. See SBI's section A response dated July 20, 2009, at page A–2 and Exhibit A–1. Consequently, with respect to SBI, we based normal value on sales to the United Kingdom.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP sales in the U.S. market. Pursuant to 19 CFR 351.412(c)(1), the normal–value level of trade is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses and profit. For EP sales, the U.S. level of trade is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

To determine whether comparison–market sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See 19 CFR 351.412(c)(2). If the comparison–market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and the comparison–market sales at the level of trade of the export transaction, we make a level–of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61733 (November 19, 1997).

In this investigation, we obtained information from the respondents regarding the marketing stages involved in making their reported comparison–market and U.S. sales, including a description of the selling activities the respondents performed for each channel of distribution.

During the POI, SBI reported that it sold PRCBs in the comparison market to distributors through a single channel of distribution. We found that the selling activities associated with all sales through this channel of distribution did not differ. Accordingly, we found that the comparison–market channels of distribution constituted a single level of trade.

SBI reported that its EP sales were made to distributors through a single

channel of distribution. We found that the selling activities associated with all sales through this channel of distribution did not differ. Accordingly, we found that the EP channels of distribution constituted a single level of trade. We found that EP level of trade was identical to the comparison–market level of trade in terms of selling activities. Thus, we matched SBI's EP sales at the same level of trade in the comparison market and made no level–of-trade adjustment.

SESSM reported two channels of distribution in the home market: retail end–users and distributors. We found that the selling activities associated with sales to retail end–users differed significantly from the selling activities associated with sales to distributors in several areas. Based on these differences and other factors, we found that the two home–market channels constitute two different levels of trade.

SESSM reported that it made its EP sales to distributors only during the POI and reported only one channel of trade in the U.S. market: distributors. Because we found that the level of selling activities associated with EP sales were identical with the level of selling activities associated with home–market sales to distributors in several areas, we found that SESSM's EP sales were made at the same level of trade as its home–market sales to distributors. As such, we matched the sales at the same level of trade as much as possible. If we found no contemporaneous home–market distributor sales of the relevant product, we matched the EP sale to home–market retail end–user sales.

Because we compared SESSM's sales at different levels of trade in some instances, we examined whether a level–of-trade adjustment was appropriate and determined that there was a pattern of consistent price differences between the retail end–users and distributors levels of trade in the home market. Therefore, when we matched an EP sale to a retail end–user sale, we made a level–of-trade adjustment to the home–market price for these differences in the level of trade in accordance with section 773(a)(7)(A) of the Act. This adjustment represents the weighted–average difference in prices between these two levels of trade in the home market. We calculated the amount of the level–of-trade adjustment by applying this weighted–average percentage price difference to the normal value determined at the different level of trade.

In their October 21, 2009, pre–preliminary comments, the petitioners argue that we should not make a level–of-trade adjustment on the grounds that SESSM did not demonstrate that it is entitled to a level–of-trade adjustment. We have not had time to consider the petitioners' arguments on this issue adequately and, based on the analysis above, we have made a level–of-trade adjustment for SESSM in this preliminary determination. We intend to examine this issue further at verification and will consider the issue in the context of the final determination.

C. Cost of Production

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that SBI's and SESSM's sales of PRCBs in the respective comparison markets were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales–below-cost investigations to determine whether these companies had sales that were made at prices below their respective COP. See Memorandum to John M. Andersen entitled ''Less–Than-Fair–Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Request to Initiate Cost Investigation for P.T. Sido Bangun Indonesia'' dated August 14, 2009, and Memorandum to John M. Andersen entitled ''Less–Than-Fair–Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Request to Initiate Cost Investigation for P.T. Super Exim Sari Ltd. and P.T. Super Makmur'' dated August 14, 2009.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product plus an amount for selling, general and administrative expenses (SG&A), financial expenses, and comparison–market packing costs (see the ''Test of Comparison–Market Sales Prices'' section below for treatment of comparison–market selling expenses and packing costs). We relied on the COP data submitted by the respondents except as indicated below with respect to SBI:

a. We increased SBI's reported cost of manufacturing (COM) to account for the unreconciled difference between the COM from the company's normal books and records and reported COM.
b. In accordance with the ''transactions disregarded'' rule of section 773(f)(2) of the Act, we adjusted SBI's COM to reflect the higher of the market price or transfer price of materials that were purchased from an affiliate.
c. We adjusted SBI's reported material cost to allocate the cost offset for internally generated and consumed scrap to products produced from both resin and purchased plastic rolls.

For additional details, see Memorandum to Neal M. Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination PT Sido Bangun Indonesia'' dated October 27, 2009.

2. Test of Comparison–Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the comparison–market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether the sales were made at prices below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were adjusted for discounts and were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below–cost sales of that product because we determine that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than COP, we determine that such sales have been made in ''substantial quantities'' and, thus, we disregard below–cost sales. See section 773(b)(2)(C) of the Act. Further, we determine that the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below–cost sales occurring during the entire POI. In such cases, because we compare prices to POI–average costs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

In this case, we found that, for certain specific products, more than 20 percent of SBI's and SESSM's comparison–market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the

remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act with respect to both SBI and SESSM.

D. Calculation of Normal Value Based on Comparison–Market Prices

We based normal value on packed, delivered prices to unaffiliated customers in the respective comparison market. We made an adjustment to the starting price, where appropriate, for discounts in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, for movement expenses under section 773(a)(6)(B)(ii) of the Act.

For comparisons to EP, we made circumstance–of-sale adjustments by deducting comparison–market direct selling expenses from, and adding U.S. direct selling expenses to, normal value.

We made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. We deducted comparison–market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

SESSM received freight revenues from the customer for certain home–market sales. As explained above, the Department treats such revenues as an offset to the specific expenses for which they were intended to compensate. Accordingly, we have used SESSM's freight revenues as an offset to its inland–freight expenses incurred to deliver products to its home–market customers.

E. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value for SESSM where there were no usable sales of the foreign like product in the home market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, financial expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses and profit on the amounts incurred and realized by SESSM in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. We made the same adjustments to constructed value as outlined in the ''Calculation of Cost of Production'' section above.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance–of-sale differences and level–of-trade differences. For comparisons to EP, we made circumstance–of-sale adjustments by deducting home–market direct selling expenses from and adding U.S. direct selling expenses to constructed value. We also made adjustments in EP comparisons, when applicable, for home–market indirect selling expenses incurred for U.S. sales to offset home–market commissions.

When possible, we calculated constructed value at the same level of trade as the EP. If constructed value was calculated at a different we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act.

Currency Conversion

It is our normal practice to make currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for SBI and SESSM.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of PRCBs from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average margins, as indicated below, as follows: (1) the rates for SBI and SESSM will be the rates we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 67.40 percent, as discussed in the ''All–Others Rate'' section, below. These suspension–of-liquidation instructions will remain in effect until further notice.

Manufacturer/Exporter	Weighted–Average Margin (percent)
P.T. Sido Bangun Indonesia	67.62
P.T. Super Exim Sari Ltd. and P.T. Super Makmur	67.18

All–Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all–others rate shall be an amount equal to the weighted–average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins and any margins determined entirely under section 776 of the Act. For this preliminary determination, we have calculated margins for SBI and SESSM that are both above *de minimis*. We have not calculated the all–others rate by using the weighted average of the rates for SBI and SESSM because doing so risks disclosure of proprietary information. Therefore, for purposes of determining the all–others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the simple–average rate of the dumping margins calculated for SBI and SESSM, *i.e.*, 67.40 percent. This is consistent with our practice in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Light–Walled Rectangular Pipe and Tube From Mexico*, 73 FR 45400, 450401 (August 5, 2008).

Disclosure

We will disclose the calculations performed in our preliminary determination to interested parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. If the Department's final determination

is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of PRCBs from Indonesia are materially injuring, or threatening material injury to, the U.S. industry (see section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed below, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. See 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. See 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party. See also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) a list of participants; (3) a list of the issues to be discussed. See 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On September 18, 2009, and September 23, 2009, SBI and SESSM requested respectively that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, SBI and SESSM requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month period to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26431 Filed 11–2–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–806]

Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 3, 2009.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that polyethylene retail carrier bags (''PRCBs'') from the Socialist Republic of Vietnam (''Vietnam'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (the ''Act''). The estimated dumping margins are shown in the *Preliminary Determination Margins* section of this notice.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Shawn Higgins, 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) 482–4114 and (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2009, the Department received a petition concerning imports of PRCBs from Indonesia, Taiwan, and Vietnam filed in proper form by Hilex Poly Co., LLC and Superbag Corporation (''Petitioners''). *See* Petition from Petitioners to the Secretary of Commerce, ''Petition for the Imposition of Antidumping and Countervailing Duties on Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam'' (March 31, 2009) (''Petition''). The Department initiated an antidumping duty investigation of PRCBs from Indonesia, Taiwan, and Vietnam on April 20, 2009. *See Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 74 FR 19049 (April 27, 2009) (''*Initiation Notice''*).

On April 21, 2009, the Department requested quantity and value (''Q&V'') information from the 65 companies identified in the Petitioners' revision of a list provided in the Petition as

potential producers or exporters of PRCBs from Vietnam. *See* Letter from Petitioners to the Secretary of Commerce, ''Revised Exhibit II–6/III–2 of the Petition'' (April 16, 2009); *see also* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, ''Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Quantity and Value Questionnaire'' (April 21, 2009). The Department received timely responses to its Q&V questionnaire from the following 23 companies: Advance Polybag Co., Ltd. (''API''), Fotai Vietnam Enterprise Corp. (''Fotai Vietnam''), Kinsplastic Vietnam Ltd. Co., Alpha Plastics (Vietnam) Co. Ltd., BITAHACO, Richway Plastics Vietnam Co., Ltd., Chin Sheng Co., Ltd., K's International Polybags Mfg., Ltd., Ampac Packaging Vietnam Ltd., Ontrue Plastics Co., Ltd. (Vietnam), Green Care Packaging Industrial (Vietnam) Co., Chung Va Century Macao Commercial Offshore Limited, Creative Pak Industrial Co., Ltd., An Phat Plastic and Packing Joint Stock Co., VN Plastic Industries Co., Ltd., VINAPACKINK Co., Ltd., Kong Wai Polybag Printing Company, Loc Cuong Trading Producing Company, Genius Development Ltd., Hanoi 27–7 Packing Company Limited (''HAPACK''), J.K.C. Vina Co., Ltd., Alta Company, and RKW Lotus Limited.[1] Of the 65 Q&V questionnaires the Department sent to potential exporters/manufacturers identified in the Petition, the Department received 19 timely responses and two untimely responses.[2] The record indicates that 55 of the 65 questionnaires sent by the Department were received by potential exporters/manufacturers.[3] Therefore, 34 companies to which the Department sent the Q&V questionnaire received the questionnaire but did not respond.

On May 22, 2009, the International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PRCBs from Indonesia, Taiwan, and Vietnam. *See Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam; Determinations,* Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Preliminary), 74 FR 25771 (May 29, 2009).

On May 27, 2009, the Department selected API and Fotai Vietnam as mandatory respondents. *See* Memorandum from Zev Primor, Senior International Trade Analyst, AD/CVD Operations, Office 4, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Selection of Respondents in the Antidumping Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (May 27, 2009) (''Respondent Selection Memorandum''). On May 28, 2009, the Department issued antidumping questionnaires to the mandatory respondents (*i.e.,* API and Fotai Vietnam). API and Fotai Vietnam submitted timely responses to section A of the Department's antidumping questionnaire on June 25, 2009. Timely responses to sections C and D of the Department's antidumping questionnaire were submitted by API and Fotai Vietnam on July 15, 2009, and July 20, 2009, respectively.

In June and July 2009, the Department received separate rate applications from API, Fotai Vietnam, Alpha Plastics (Vietnam) Co., Ltd., Alta Company, Ampac Packaging Vietnam Ltd., BITAHACO, Chin Sheng Co., Ltd., Chung Va Century Macao Commercial Offshore Limited, HAPACK, Kong Wai Polybag Printing Company, Kinsplastic Vietnam Ltd. Co., Loc Cuong Trading Producing Company, Ontrue Plastics Co., Ltd. (Vietnam), Richway Plastics Vietnam Co., Ltd., RKW Lotus Limited, VINAPACKINK Co., Ltd., K's International Polybags Mfg., Ltd., and VN Plastic Industries Co. Ltd.

The Department issued supplemental questionnaires to, and between July 2009 and September 2009, received responses from API, Fotai Vietnam, Alpha Plastics (Vietnam) Co., Ltd., Alta Company, Ampac Packaging Vietnam Ltd., BITAHACO, Chin Sheng Co., Ltd., Chung Va Century Macao Commercial Offshore Limited, HAPACK, Kong Wai Polybag Printing Company, Kinsplastic Vietnam Ltd. Co., Loc Cuong Trading Producing Company, Ontrue Plastics Co., Ltd. (Vietnam), Richway Plastics Vietnam Co., Ltd., RKW Lotus Limited, VINAPACKINK Co., Ltd., K's International Polybags Mfg., Ltd., and VN Plastic Industries Co. Ltd. From July 2009 through September 2009, Petitioners submitted comments to the Department regarding API and Fotai Vietnam's responses to sections A, C, and D of the antidumping questionnaire.

On June 9, 2009, the Department released a letter to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value (''SV'') selection. *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, ''Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (June 9, 2009). During June 2009 and July 2009, Petitioners,[4] API,[5] and Fotai Vietnam[6] submitted comments on the appropriate surrogate country and SVs. On August 26, 2009, after evaluating the interested parties' comments, the Department selected India as the surrogate country for this investigation.[7]

On August 7, 2009, Petitioners submitted allegations of targeted dumping with respect to API and Fotai Vietnam. API and Fotai Vietnam responded to Petitioners' targeted dumping allegations on September 2, 2009, and August 28, 2009, respectively.

On August 13, 2009, Petitioners made a request for a 50-day postponement of the preliminary determination. On August 21, 2009, the Department extended this preliminary

[1] Because VINAPACKINK Co., Ltd., VN Plastic Industries Co., Ltd., Kong Wai Polybag Printing Company, and Genius Development Ltd. were not identified in the Petition as potential producers or exporters of PRCBs from Vietnam, the Department did not send these companies Q&V questionnaires. The Department made the Q&V questionnaire publicly available on its Web site for producers and exporters of PRCB from Vietnam that were not named in teh Petition.

[2] Tan Hoa Loi and Nam hai Son Export Import JSC reported via mail and e-mal, respectively, that they did not ship PRCBs to the US during the period of investigation (''POI''). these responses were incomplete and not timely.

[3] Federal Express and DHL were unable to deliver the Q&V questionnaire to the addresses of 10 exporters/manufacturers provided by Petitioners.

[4] *See* Letter from Petitioners to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags From Vietnam: Petitioners' Rebuttal Surrogate Value Submission'' (July 23, 2009); Letter from Petitioners to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags From Vietnam: Initial Surrogate Value Submission'' (July 13, 2009); Letter from Petitioners to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags From Vietnam: Petitioners' Rebuttal Comments On Surrogate Country Selection'' (July 7, 2009); Letter from Petitioners to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags From Vietnam: Petitioners' Comments On Surrogate Country Selection'' (June 30, 2009);

[5] *See* Letter from API to the Secretary of Commerce, ''Antidumping Duty Investigation Involving Polyethylene Retail Carrier Bags from Vietnam'' (July 29, 2009); Letter from API to the Secretary of Commerce, ''Antidumping Duty Investigation Involving Polyethylene Retail Carrier Bags from Vietnam'' (July 13, 2009); Letter from API to the Secretary of Commerce, ''Antidumping Duty Investigation Involving Polyethylene Retail Carrier Bags from Vietnam—Surrogate Country Comments'' (June 30, 2009).

[6] *See* Letter from Fotai Vietnam to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (July 13, 2009); Letter from Fotai Vietnam to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (June 30, 2009).

[7] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, ''Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Selection of a Surrogate Country'' (August 26, 2009).

determination by fifty days. *See Postponement of Preliminary Determination of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam,* 74 FR 42229 (August 21, 2009).

On September 23, 2009, Fotai Vietnam notified the Department that it would no longer participate in this investigation. *See* Letter from Fotai Vietnam to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (September 23, 2009) (''Fotai Vietnam Withdrawal Letter''). Similarly, on October 21, 2009, API notified the Department that it would no longer participate in this investigation. *See* Letter from API to the Secretary of Commerce, ''Antidumping Duty Investigation Involving Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (October 21, 2009) (''API Withdrawal Letter'').

On October 19, 2009, Petitioners requested that the Department revise the estimated dumping margins stated in the Petition and calculated for purposes of initiation.[8] However, because Petitioners' October 19, 2009, submission was received by the Department just eight days prior to the signature date of the preliminary determination, the Department did not have sufficient time to analyze its substance. Therefore, the Department will evaluate these comments in the final determination.

Period of Investigation

The POI is July 1, 2008, through December 31, 2008. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, (*i.e.,* March 2009). *See* 19 CFR 351.204(b)(1).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on September 22, 2009, API requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination.[9] On September 28, 2009, API agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), the Department is granting the request and is postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) This preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

Scope of the Investigation

The merchandise subject to these investigations is polyethylene retail carrier bags, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of these investigations excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Imports of merchandise included within the scope of these investigations are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This subheading may also cover products that are outside the scope of these investigations. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Scope Comments

As explained in the preamble to the Department's regulations, the Department sets aside a period of time in its *Initiation Notice* for parties to raise issues regarding product coverage, and encourages all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice.* The Department received no comments regarding the scope of this investigation.

Non-Market Economy Treatment

The Department considers Vietnam to be a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review,* 73 FR 52015 (September 8, 2008), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009). The Department has not revoked Vietnam's status as an NME country. Therefore, in this preliminary determination, the Department has continued to treat Vietnam as an NME country and applied its current NME methodology.

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation Notice,* 74 FR at 19054–55. The process requires exporters and producers to submit a separate rate status application.[10] However, the

[8] *See* Letter from Petitioners to the Secretary of Commerce, ''Polyethylene Retail Carrier Bags From Vietnam: Petitioners' Comments Concerning Updates To And Further Corroboration Of The Estimated Margin Calculations Used By The Department For Initiation Of This Investigation'' (October 19, 2009).

[9] On September 17, 2009, Petitioners requested that, in the event of a negative preliminary determination in this investigation, the Department postpone its final determination.

[10] *See Policy Bulletin 05.1: Separate-Rate Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005), at 6, available at *http://ia.ita.doc.gov/policy/bull05-1.pdf.* (''*Policy Bulletin 05.1*''). Policy Bulletin 05.1 states, in relevant part, ''While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the

Continued

standard for separate rate eligibility has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME''), then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

1. Wholly Foreign-Owned

Nine separate rate applicants in this investigation (''Foreign-Owned SR Applicants''), provided evidence that they are wholly owned by individuals or companies located in MEs in their separate rate applications. Therefore, because they are wholly foreign-owned and the Department has no evidence indicating that they are under the control of the government of Vietnam, a separate rates analysis is not necessary to determine whether these companies are independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104 (December 20, 1999) (determining that the respondent was wholly foreign-owned, and thus, qualified for a separate rate). Accordingly, the Department has preliminarily granted a separate rate to these Foreign-Owned SR Applicants. *See Preliminary Determination Margins* section below for companies marked with a ''^'' designating these companies as foreign-owned SR recipients.

2. Joint Ventures Between Vietnamese and Foreign Companies or Wholly Vietnamese-Owned Companies

Five of the separate rate applicants in this investigation are either joint ventures between Vietnamese and foreign companies or are wholly Vietnamese-owned companies (collectively, ''Vietnamese SR Applicants''). The Department has analyzed whether each Vietnamese SR Applicant has demonstrated the absence of *de jure* and *de facto* governmental control over its respective export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export license; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by the five Vietnamese SR Applicants supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of Vietnamese companies; and (3) the implementation of formal measures by the government decentralizing control of Vietnamese companies.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence provided by the five Vietnamese SR Applicants supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing that the companies: (1) Set their own export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

In all, the evidence placed on the record of this investigation by the five Vietnamese SR Applicants demonstrates an absence of *de jure* and *de facto* government control in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted a separate rate to the Vietnamese SR Applicants. *See Preliminary Determination Margins* section below for companies marked with an ''*'' designating these companies as Vietnamese SR recipients.

3. Wholly State-Owned Exporters/Manufacturers and Exporters/Manufacturers Whose Stock Is Partially Owned by a Government State Asset Management Company

Two of the separate rate applicants in this investigation are either wholly state-owned or are exporters/manufacturers whose stock is partially owned by a government state asset management company (collectively, State-Owned SR Applicants). According to HAPACK's Separate Rate Application, HAPACK is a state-owned enterprise, owned by the Hanoi People's Committee. *See* HAPACK's July 2, 2009, Separate Rate Application at 10. According to Alta Company's Separate Rate Application, Alta Company is partially owned by a state-owned

pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.''

enterprise. *See* Alta Company's July 2, 2009, Separate Rate Application at 11. Absent evidence of *de facto* control over export activities, however, government ownership alone does not warrant denying a company a separate rate. *See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 57329 (October 2, 2008) and the accompanying Issues and Decisions Memorandum at Comment 7.

The Department preliminarily determines that the evidence placed on the record of this investigation by HAPACK and Alta Company demonstrates an absence of *de facto* government control of exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* HAPACK and Alta Company both certified that their export prices are not set by, subject to the approval of, or in any way controlled by a government entity at any level and that they have independent authority to negotiate and sign export contracts, by providing price negotiation documents for their first U.S. sale. *See, e.g.,* HAPACK's July 2, 2009, Separate Rate Application and September 28, 2009, Separate Rate Application Supplemental Questionnaire Response; *see also* Alta Company's July 2, 2009, Separate Rate Application. HAPACK and Alta Company also stated that they have the right to select their own management and to decide how profits will be distributed. *See* HAPACK's July 2, 2009, Separate Rate Application and September 28, 2009, Separate Rate Application Supplemental Questionnaire Response; *see also* Alta Company's July 2, 2009, Separate Rate Application. Thus, the Department preliminarily determines that there is an absence of both *de jure* and *de facto* government control with respect to both HAPACK and Alta Company. Accordingly, the Department has preliminarily granted a separate rate to the State-Owned SR Applicants. *See Preliminary Determination Margins* section below for companies marked with an ''o'' designating these companies as state-owned SR recipients.

Companies Not Receiving a Separate Rate

In the *Initiation Notice,* the Department requested that all companies wishing to qualify for separate rate status in this investigation submit a separate rate status application. *See Initiation Notice.* The following five exporters submitted a timely response to the Department's Q&V questionnaire but did not provide a separate rate application: (1) Green Care Packaging Industrial (Vietnam) Co.; (2) Creative Pak Industrial Co., Ltd.; (3) An Phat Plastic and Packing Joint Stock Co.; (4) Genius Development Ltd.; and (5) J.K.C. Vina Co., Ltd., and therefore have not demonstrated their eligibility for separate rate status in this investigation. As a result, the Department is treating these Vietnamese exporters as part of the Vietnam-wide entity.

Margins for Separate Rate Recipients

Normally the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on adverse facts available (''AFA''). *See* section 735(c)(5)(A) of the Act. If, however, the estimated weighted-average margins for all individually investigated respondents are *de minimis* or based entirely on AFA, the Department may use any reasonable method. *See* section 735(c)(5)(B) of the Act. In this proceeding, because the rate for all individually investigated respondents is based on AFA, we have relied on information from the Petition to determine a rate to be applied to the respondents that have demonstrated entitlement to a separate rate. *See, e.g., Uncovered Innerspring Units From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 79443, 79445 (December 29, 2008). Specifically, we have assigned a simple average of the margins contained in the Petition, as adjusted by the Department for purposes of initiation, *i.e.,* 52.30 percent, as the separate rate for the preliminary determination. *Id.; see also Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China,* 73 FR 22327, 22329–30 (April 25, 2008), unchanged in *Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China,* 73 FR 39669, 39671 (July 10, 2008). Entities receiving this rate are identified by name in the *Preliminary Determination Margins* section of this notice.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the Petition, the final determination, a previous administrative review, or other information placed on the record.

Vietnam-Wide Entity

1. Non-Responsive Companies

On April 21, 2009, the Department requested Q&V information from the 65 companies identified in the Petitioners' revision of a list provided in the Petition as potential producers or exporters of PRCBs from Vietnam. Additionally, the Department's *Initiation Notice* informed these companies of the requirements to respond to both the Department's Q&V questionnaire and the separate rate application in order to receive consideration for separate rate status. However, not all exporters/manufacturers responded to the Department's request for Q&V information.[11] Furthermore, not all exporters/manufacturers that submitted Q&V information also submitted a separate rate application.[12] Therefore, the Department preliminarily determines that there were exports of merchandise under review from Vietnam exporters/manufacturers that did not respond to the Department's Q&V questionnaire, and/or subsequently did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these Vietnamese exporters/manufacturers (''non-responsive companies'') as part of the Vietnam-wide entity.

2. Fotai Vietnam and API

As stated above, both Fotai Vietnam and API informed the Department, on

[11] As stated in the *Background* section above, of the 65 Q&V questionnaires the Department sent to potential exporters identified in the Petition, the Department received 19 timely responses. The record indicates that 55 of the 65 questionnaires sent by the Department were received. *See* Respondent Selection Memorandum and *Background* section above.

[12] As stated in the *Separate Rates* section above, five exporters submitted a timely response to the Department's Q&V questionnaire but did not provide a separate rate application.

September 23, 2009, and October 21, 2009, respectively, that they would no longer participate in the instant investigation. Further, Fotai Vietnam and API requested that the Department: (1) Remove all business proprietary information (''BPI'') submitted to the record of this investigation and (2) instruct all parties on the administrative protective order (''APO'') service list to certify the destruction of any materials served by Fotai Vietnam or API under the APO. *See* Fotai Vietnam Withdrawal Letter and API Withdrawal Letter. Additionally, API also requested that the Department remove its public information from the record. *See* API Withdrawal Letter. The Department, however, following its practice, retained public copies of submissions provided on behalf of API and Fotai Vietnam as part of the public record in this proceeding.[13] Because both Fotai Vietnam and API have removed all of their BPI submitted to the record of this investigation, including their separate rate applications, Fotai Vietnam and API have failed to demonstrate that they operate free of government control and that they are entitled to a separate rate. Therefore, the Department preliminarily finds that Fotai Vietnam and API are part of the Vietnam-wide entity.

Application of Total Adverse Facts Available

As noted above, the Department has determined that Fotai Vietnam, API, and the non-responsive companies are part of the Vietnam-wide entity. Pursuant to section 776(a) of the Act, the Department further finds that the Vietnam-wide entity failed to respond to the Department's questionnaires, withheld required information, and/or submitted information that cannot be verified, thus significantly impeding the proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003). Accordingly, the Department has preliminarily determined to base the Vietnam-wide entity's margin on facts otherwise available. *See* section 776(a) of the Act. Further, because the Vietnam-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department preliminarily determines that, when selecting from among the facts otherwise available, an adverse inference is warranted for the Vietnam-wide entity pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the Petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). Further, it is the Department's practice to select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005).

It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the Petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum, at ''Facts Available.'' Therefore, as AFA, the Department has preliminarily assigned to the Vietnam-wide entity the highest dumping margin alleged in the Petition, as adjusted by the Department for initiation, which is 76.11 percent.

The dumping margin for the Vietnam-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from the exporter/manufacturer combinations listed in the chart in the *Preliminary Determination Margins* section below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act (''*SAA*''), H.R. Doc. No. 103–316, Vol. 1 (1994) at 870. Corroboration means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final determination) *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997). Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627 (June 16, 2003) (unchanged in final determination) *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra*

[13] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to API, ''Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Removal of Advance Polybag Company's Business Proprietary Information from the Record'' (October 27, 2009). *See also, e.g.,* Letter from Richard Weible, Office Director, AD/CVD Operations, Office 7, to G J Steel, ''Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand'' (April, 8, 2009).

High Voltage Ceramic Station Post Insulators from Japan, 68 FR 62560 (November 5, 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183–84 (March 11, 2005); SAA at 870.

Because there are no mandatory respondents, to corroborate the 28.49 and 76.11 percent dumping margins, which were calculated for purposes of initiation and used to assign dumping margins to the companies receiving a separate rate and to the Vietnam-wide entity, we revisited our pre-initiation analysis of the adequacy and accuracy of the information in the Petition. *See* ''Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: AD Investigation Initiation Checklist'' (April 20, 2009). We examined evidence supporting the calculations in the Petition and the supplemental information provided by Petitioners prior to initiation to determine the probative value of the margins alleged in the Petition. During our pre-initiation analysis, we examined the information used as the basis of export price (''EP'') and normal value (''NV'') in the Petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the Petition or, based on our requests, in supplements to the Petition, which corroborated key elements of the EP and NV calculations. *Id.* We received no comments as to the relevance or probative value of this information. Accordingly, the Department finds that the rates derived from the Petition and used for purposes of initiation have probative value for the purpose of being assigned to the companies receiving a separate rate and to the Vietnam-wide entity.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Initiation Notice.* This change in practice is described in *Policy Bulletin 05.1,* which states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

Preliminary Determination Margins

The Department preliminarily determines that the following dumping margins exist for the period July 1, 2008, through December 31, 2008:[14]

Manufacturer	Exporter	Antidumping duty percent margin
Alpha Plastics (Vietnam) Co., Ltd.^	Alpha Plastics (Vietnam) Co., Ltd.^	52.30
Alta Company°	Alta Company°	52.30
Ampac Packaging Vietnam Ltd.^	Ampac Packaging Vietnam Ltd.^	52.30
BITAHACO*	BITAHACO*	52.30
Chin Sheng Co., Ltd.*	Chin Sheng Co., Ltd.*	52.30
Chung Va (Vietnam) Plastic Packaging Co., Ltd.^	Chung Va Century Macao Commercial Offshore Limited^	52.30
Hanoi 27–7 Packaging Company Limited, aka Hanoi 27–7 Packing Company Limited, aka HAPACK Co. Ltd, aka HAPACK°.	Hanoi 27–7 Packaging Company Limited, aka Hanoi 27–7 Packing Company Limited, aka HAPACK Co. Ltd, aka HAPACK°.	52.30
Hoi Hung Company Limited^	Kong Wai Polybag Printing Company^	52.30
Kinsplastic Vietnam Ltd. Co.^	Kinsplastic Vietnam Ltd. Co.^	52.30
Loc Cuong Trading Producing Company Limited, aka Loc Cuong Trading Producing Company, aka Loc Cuong Trading Producing Co. Ltd.*	Loc Cuong Trading Producing Company Limited, aka Loc Cuong Trading Producing Company, aka Loc Cuong Trading Producing Co. Ltd.*	52.30
Ontrue Plastics Co., Ltd. (Vietnam)^	Ontrue Plastics Co., Ltd. (Vietnam)^	52.30
Richway Plastics Vietnam Co., Ltd.^	Richway Plastics Vietnam Co., Ltd.^	52.30
RKW Lotus Limited Co., Ltd., aka RKW Lotus Limited, aka RKW Lotus Ltd.^	RKW Lotus Limited Co., Ltd., aka RKW Lotus Limited, aka RKW Lotus Ltd.^	52.30
VINAPACKINK Co., Ltd.*	VINAPACKINK Co., Ltd.*	52.30
VN K's International Polybags Joint Stock Company*	K's International Polybags MFG Ltd*	52.30
VN Plastic Industries Co. Ltd.^	VN Plastic Industries Co. Ltd^	52.30
Vietnam-Wide Entity[15]		76.11

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of PRCBs from Vietnam as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds U.S. price, as follows: (1) The rate for the exporter/manufacturer combinations listed in the chart above will be the rate which has been determined in this preliminary determination; (2) for all Vietnamese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the Vietnam-wide rate; and (3) for all

[14] As stated above, ''^'' designates companies as foreign-owned SR recipients, ''*'' designates companies as Vietnamese SR recipients, and ''°'' designates companies as state-owned SR recipients.

[15] API, Fotai Vietnam, Green Care Packaging Industrial (Vietnam) Co., Creative Pak Industrial Co., Ltd., An Phat Plastic and Packing Joint Stock Co., Genius Development Ltd., and J.K.C. Vina Co., Ltd. are all part of the Vietnam-wide entity.

non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the Vietnamese exporter/manufacturer combination that supplied that non-Vietnamese exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department has notified the ITC of its preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of PRCBs, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of the final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than two weeks after the date of publication of this preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties that wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26428 Filed 11–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 090429803–91272–02]

Procedures for Participating in the 2010 Decennial Census New Construction Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice.

SUMMARY: The Bureau of the Census (Census Bureau) publishes this notice to announce the final procedures for the New Construction Program, which allows tribal and local governments to submit lists of addresses for newly constructed housing units to the Census Bureau. The purpose of this program is to ensure that the Census Bureau's address list is as complete and accurate as possible for the conduct of the decennial census on April 1, 2010. This notice also summarizes the comments received on the July 1, 2009, **Federal Register** notice (74 FR 31405) requesting comments on the proposed 2010 Census New Construction Program and the response of the Census Bureau.

Electronic availability: This notice is available on the Internet from the Census Bureau's Web site at *http://www.census.gov/*.

DATES: These New Construction procedures, which reflect revisions based on public comment following publication of draft procedures, will be implemented on November 3, 2009.

ADDRESSES: Correspondence concerning the 2010 Census New Construction Program in general should be submitted to Arnold A. Jackson, Associate Director for Decennial Census, U.S. Census Bureau, through one of the following methods:

FAX: Correspondence may be faxed to (301) 763–8867.

E-mail: Correspondence may be e-mailed to *Arnold.A.Jackson@census.gov*.

FOR FURTHER INFORMATION CONTACT: For further information about the Census Bureau's 2010 Census New Construction Program, contact Timothy F. Trainor, Chief, Geography Division, U.S. Census Bureau, through one of the following methods:

FAX: Correspondence may be faxed to (301) 763–4710.

E-mail: Correspondence may be e-mailed to *Timothy.F.Trainor@census.gov*.

SUPPLEMENTARY INFORMATION: As part of its objective to produce a complete and accurate population count, the Census Bureau will implement the 2010 Decennial Census New Construction Program to capture the addresses of newly constructed housing units. Specifically, the purpose of this program is to utilize tribal and local knowledge of recent and in-progress construction to identify, and add to the census address list, the addresses for housing units not yet existent at the time of the Address Canvassing Operation. Address Canvassing was a nationwide check of addresses that was completed during the spring/summer of 2009 in which the Census Bureau verified the census address list that will be used to deliver questionnaires for the 2010 Decennial Census. During address canvassing, census workers systematically canvassed all census blocks looking for living quarters and added, deleted, and corrected entries on the census address list to ensure its completeness and accuracy. In order to account for any housing units of which the construction began after the start of the Address Canvassing Operation, the Census Bureau will implement the New Construction Program.

The 2010 Decennial Census New Construction Program is conducted by the Census Bureau under the authority of Title 13, United States Code, Section 141(a), and is separate and distinct from the Local Update of Census Addresses Program (see 73 FR 12369) in that its only purpose is to identify addresses for housing units newly constructed (starting in March 2009) that are expected to be closed to the elements (final roof, windows, and doors) by Census Day, April 1, 2010. The New Construction Program was conducted for the first time as part of Census 2000.

Summary of Comments Received in Response to the Proposed New Construction Program

On July 1, 2009, the Census Bureau issued a **Federal Register** notice (74 FR

31405) requesting comments on the proposed 2010 Census New Construction Program. Four sets of comments on the proposal were received during the comment period. This notice issues final procedures that incorporate changes made as a result of the comments received.

A summary of the public comments and the response of the Census Bureau are provided below:

Commenter 1. The commenter suggested that the Census Bureau state its support for local governments to receive external assistance from nonprofit organizations or commercial firms in the form of philanthropic support and external expertise to participate fully in the New Construction Program. Commenter 1 also recommended that the New Construction Program be expanded to include all additional addresses that may be captured from commercially available sources (rather than confined to those newly constructed after the Address Canvassing Operation) OR that communities determined to be hard-to-count as determined by the Census 2000 Tract Level Planning Database be allowed to submit additional addresses sourced from commercial data for review in a separate program.

Response 1. The Census Bureau acknowledges the first suggestion and encourages governmental participants to leverage any non-governmental partnerships that will help them identify the address for newly constructed housing units. The Census Bureau did not adopt the second recommendation regarding which addresses to accept in the New Construction Program or the proposed separate new program for the final procedures. The Census Bureau leaves it to New Construction Program participants to identify newly constructed addresses from any source available, commercial or administrative. The Census Bureau confines the New Construction Program to the submission of newly constructed addresses (rather than allowing the submission of any address that may have been missed in the LUCA Program) because after the review phase of the LUCA Program, the Census Bureau conducted a nationwide field check of the census address list in the Address Canvassing Operation to bring the list up to date from the time the LUCA Program ended. To allow participants (who do not have access to the census address list as part of the New Construction Program) to add any address regardless of its construction date increases the risk of address duplication and costly and unnecessary field work. The successive operations to assure the completeness of the census address list (the LUCA Program, Address Canvassing, the New Construction Program, updates from the United States Postal Service's list of delivery addresses close to Census Day, and an address list update at the time of questionnaire delivery for areas where census staff deliver the questionnaires) in combination are designed to provide an address list that is as complete and accurate as possible.

Commenter 2. The commenter recommended that the New Construction Program be open to state governments in addition to tribal and local governments.

Response 2. The Census Bureau did not adopt this recommendation for the final procedures because most state governments are not likely to have current, on-the-ground knowledge of construction recently completed or in progress. Nonetheless, local governments wishing to enlist their state governments to assist are free to do so or can indicate to the Census Bureau that their New Construction materials should be sent to a state contact.

Commenter 3. The commenter recommended that New Construction Program participants be permitted to submit addresses for housing units constructed prior to March 2009, believing that there is no mechanism for participants to identify addresses for units constructed after the end of the LUCA Program but prior to the New Construction Program.

Response 3. The Census Bureau did not accept this recommendation for the final procedures. In the Address Canvassing Operation, conducted in the spring and summer of 2009, field staff canvassed blocks nationwide, adding any addresses that were missing from the census address list. The New Construction Program is designed to allow tribal and local governments to identify addresses for housing units constructed between the end of the Address Canvassing Operation and Census Day. Governments that participated in the LUCA Program will receive feedback on the results of the Address Canvassing for their areas; they may appeal the non-acceptance of any addresses they offered as adds to the census address list as well as any addresses deleted from the address list in the Address Canvassing Operation.

Commenter 4. The commenter noted that the proposal for the New Construction Program lacked a reference to the phenomenon of ''hidden'' or hard-to-find housing units, and that not just governments but other interested partners should be involved in identifying them.

Response 4. To the extent that the units meet the Census Bureau's definition for a housing unit[1] and are in mail-out/mail-back areas, have locatable city style addresses, and are a result of construction occurring between March 2009 and April 1, 2010, they can be submitted as part of the New Construction Program. The Census Bureau encourages governmental participants to leverage any non-governmental partnerships that will help them identify the addresses for newly constructed housing units.

2010 Decennial Census New Construction Program

The 2010 Census New Construction Program is offered to Federally Recognized American Indian tribal governments with reservations and/or trust lands and local governments (counties, incorporated places, and functioning minor civil divisions) that include areas where the Census Bureau will deliver the census questionnaires by mail. For other areas, Census Bureau enumerators will hand deliver the census questionnaires to all housing units in each block, including any newly constructed units not already on the census address list. Tribal and local governments that wish to participate in the program will be invited to submit a list of addresses of newly constructed housing units for inclusion in the Census Address List. The address list submitted by New Construction Program participants must only include addresses for housing units for which construction began during or after March 2009 that are expected to be closed to the elements (final roof, windows, and doors) by Census Day, April 1, 2010. No street or boundary updates will be accepted by the New Construction Program.

The New Construction Program will not accept additions of Group Quarters addresses. Group Quarters addresses are defined as places where people live or stay in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents. The Census Bureau has programs that are specifically designed to capture new Group Quarters addresses, including but not limited to, Group Quarters

[1] A *housing unit* is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as a separate living quarters, or if vacant, intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and which have direct access from outside the building or through a common hall. For vacant units, the criteria of separateness and direct access are applied to the intended occupants whenever possible.

Validation, Group Quarters Advanced Visit, Group Quarters Enumeration, and the Count Review program.

The maps or spatial data that the Census Bureau provides to New Construction Program participants are for use as a reference for assigning census tract and block codes (geocoding) for each submitted address. The maps are offered in Portable Document Format (PDF) and spatial data are available from TIGER® in shapefile format that requires a Geographic Information System (GIS) software application for viewing.

For governments choosing maps in PDF, the Census Bureau will provide Adobe® Reader® software to view the PDF maps. For those participants who choose to use shapefiles, the Census Bureau will provide the MAF/TIGER Partnership Software (MTPS) to enter addresses and output them in the prescribed format. The MTPS is an easy-to-use desktop tool that makes participation easier for governments without a GIS system. The MTPS also provides map-viewing capability when used with the shapefiles provided by the Census Bureau. However, participants may use their own software to create a computer readable list of addresses in the prescribed format.

The Census Bureau will send out New Construction materials to registered participants during November 2009 through January 2010. The PDF package will contain the following:

(1) The New Construction Quick Start Document
(2) The New Construction User Guide
(3) The New Construction Address List Template
(4) Zip Software
(5) CD Readme.txt File
(6) PDF Software (Adobe® Reader®)
(7) New Construction Map PDFs

The MTPS/Shapefile package will contain the following:

(1) The New Construction Quick Start Document
(2) The New Construction User Guide
(3) The New Construction MTPS User Guide
(4) The New Construction Address List Template
(5) Zip Software
(6) CD Readme.txt File
(7) MTPS Software
(8) Shapefiles

Participants must submit their New Construction address lists to the Census Bureau within forty-five (45) calendar days after receipt of the New Construction materials. ''Receipt'' as used herein is defined as the delivery date reported to the Census Bureau by the delivery service that delivers the New Construction materials to the eligible government. The New Construction addresses must be returned in the Census Bureau's predefined format and each address must be ''geocoded'' or assigned to the census tract and block in which it is located as shown on the New Construction census maps (PDF or shapefiles).

Files that are submitted in the proper format are compared against the Census Bureau's Master Address File to check for any addresses already on the list. The Census Bureau, using the participant supplied addresses, will visit and attempt to enumerate each newly constructed housing unit that has been identified as missing from our list. The census enumeration process will determine the final housing unit status and population for each new unit.

Classification

Executive Order 12866

This notice has been determined to not be significant under Executive Order 12866.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the Census Bureau obtained clearance for this information collection in October 2009 under the Generic Clearance for Geographic Partnership Programs (OMB Control Number 0607–0795, expires on April 30, 2012).

Dated October 27, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–26423 Filed 11–2–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–HA–0159]

Extension of a Currently Approved Collection

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 4, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Health Affairs (OASD), TRICARE Operations Division, *Attn:* Ms. Shane Pham, 5111 Leesburg Pike, Suite 810(A), Falls Church, VA 22041–3206, or call TRICARE Operations Division, at 703–681–0039 ext. 8666.

Title; Associated Form; and OMB Number: TRICARE Prime Enrollment Application/PCM Change Form DD Form 2876, and TRICARE Prime Disenrollment Application; DD Form 2877; OMB Number 0720–0008.

Needs and Uses: This information is collected in accordance with the National Defense Authorization Act for Fiscal Year 1001 (Pub. L. 106–398),

section 723(b)(E). These collection instruments serve as applications for the Enrollment, Primary Care Manager (PCM) Change and Disenrollment for the Department of Defense's TRICARE Prime program established in accordance with title 10 U.S.C. 1099 (which calls for a healthcare enrollment system). Monthly payment options for retiree enrollment fees for TRICARE Prime are established in accordance with title 10 U.S.C. 1097a(c). The information collected on the TRICARE Prime Enrollment Application/PCM Change Form provides the necessary data to determine beneficiary eligibility, to identify the selection of a health care option, and to change the designated PCM when the beneficiary is relocating or merely requests a local PCM change. The information collected on the TRICARE Prime Disenrollment Form provides the necessary data to disenroll a beneficiary from TRICARE Prime. The Disenrollment Application is needed to implement disenrollment from TRICARE Prime, TRICARE Prime Remote or the Uniformed Services Family Health Plan as requested by the enrollee. Failure to provide information will result in continued enrollment and beneficiaries' responsibility for payment of an enrollment fee.

Affected Public: Individuals or Households.

Annual Burden Hours: 22,317.

Number of Respondents: 72,905.

Responses per Respondent: 1.

Average Burden per Response: TRICARE Prime Enrollment Application/PCM Change Form: 20 minutes or .33% of an hour/TRICARE Prime Disenrollment—5 minutes or .083%. (average burden per response for completing both forms is 18.36 minutes or .30% of an hour).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense established TRICARE Prime as a managed-care option, similar to a civilian HMO (health maintenance organization). Active duty service members are required to be enrolled in TRICARE Prime or TRICARE Prime Remote. They must take action to enroll by filling out the appropriate enrollment form and submitting it to the Managed Care Support Contractor (MCSC). TRICARE Prime is also available to other TRICARE beneficiaries who are also required to fill out the appropriate enrollment or disenrollment forms. TRICARE Prime enrollee's health care is coordinated by a primary care manager (PCM) whom could be a part of a military treatment facility, a civilian network or TRICARE Prime Remote where eligible. In order to carry out this program, it is necessary that certain beneficiaries electing to enroll/disenroll in TRICARE Prime, TRICARE Prime Remote or change a PCM complete an enrollment application request. Completion of the enrollment forms is an essential element of the TRICARE Prime program.

Dated: October 29, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26407 Filed 11–2–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Office of the Secretary of the Air Force Acceptance of Group Application Under Public Law 95–202 and Department of Defense Directive (DODD) 1000.20

SUMMARY: ''Honorably Discharged Members of The Gold Coast Native Guard Who Were Civilian Workers Employed From 1942 to August 15, 1945, by the U.S. Army, Headquartered at Then 'American Camp,' Now Named 'Burma Camp,' Ghana'' Under the provisions of Section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of a group known as: ''Honorably Discharged Members of The Gold Coast Native Guard Who Were Civilian Workers Employed From 1942 to August 15, 1945, by the U.S. Army, Headquartered at then 'American Camp,' Now Named 'Burma Camp,' Ghana.''

FOR MORE INFORMATION: Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE–Wing, 3rd Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Bao-Anh Trinh,

YA–3, DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E9–26401 Filed 11–2–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Fort Bliss Army Growth and Force Structure Realignment Draft; Environmental Impact Statement (DEIS)

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of a DEIS identifying the potential environmental effects that would result from use of stationing and training capacity, land use changes, and training infrastructure improvements at Fort Bliss (Texas) to support Army growth and force structure realignment.

The DEIS tiers from the Army Growth and Force Structure Realignment Programmatic Environmental Impact Statement (GTA PEIS), for which a Record of Decision was signed in 2007.

DATES: The public comment period for the DEIS will end 60 days after publication of this NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments should be sent to: Mr. John F. Barrera, IMWE–BLS–PWE, Building 624, Taylor Road, Fort Bliss, TX 79916–6812; *e-mail: bliss.eis@conus.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Jean Offutt, Public Affairs Officer, IMWE–BLS–PA; Fort Bliss, TX 79916–6812; *telephone:* (915) 568–6812; *fax:* (915) 568–2995; *e-mail: jean.offutt@us.army.mil.*

SUPPLEMENTARY INFORMATION: The Proposed Action would support the growth of the Army and allow for reasonably foreseeable future stationing actions, land use changes, and training infrastructure improvements that take advantage of the varied terrain at Fort Bliss; full suite of training ranges; collocation with heavy, light, and aviation combat units; and collocation with various support units.

Three categories of interrelated alternatives are analyzed in this document: stationing/training; land use changes; and training infrastructure improvements. Each category contains a No Action alternative and several action alternatives.

The stationing/training category of alternatives analyzes the stationing decision made in the GTA PEIS, with deployment (some units will not be present and training at Fort Bliss) and without deployment (assumes all units assigned to Fort Bliss will be there and training) scenarios. The document also

analyzes reasonably foreseeable future growth at Fort Bliss, including adding one or more Stryker Brigade Combat Teams and additional support units.

Land uses analyzed in the Fort Bliss DEIS are primarily focused in the rugged terrain of northeast McGregor Range, with minor changes in the southeast and Tularosa Basin portions of McGregor Range, for the purpose of supporting realistic and effective light infantry training. None of the proposed land use changes include the Culp Canyon Wilderness Study Area or the Black Grama Grassland Area of Critical Environmental Concern.

Training infrastructure improvements analyzed in the DEIS include construction of additional firing ranges and expansion or construction of administrative and training support facilities to support the units stationed at Fort Bliss.

Actions analyzed in this document would result in a range of potential impacts. Erosion would increase substantially on range roads interior to the Fort Bliss Training Complex, requiring more frequent maintenance. The most expansive stationing alternative analyzed may, as a result of high tempo training schedules, reduce Native American access to areas of the installation in which they have an ongoing interest. The proposed action would, in certain alternatives, result in a small increase in the economic benefit provided by growth of the installation, and a small decrease in certain quality of life indicators (*e.g.,* traffic, access to government services). Use of restricted airspace for military training would increase under certain alternatives, further limiting access of general and commercial aviation. Training related noise remains significant in areas adjacent to Dona Ana Range and portions of McGregor Range.

The DEIS and other environmental documents are available on the Fort Bliss Web site (*https://www.bliss.army.mil/*) or in the following libraries: In El Paso, TX, the Richard Burges Regional Library, 9600 Dyer; the Irving Schwartz Branch Library, 1865 Dean Martin; the Clardy Fox Branch Library, 5515 Robert Alva; and the Doris van Doren Regional Branch Library, 551 Redd Road. In Las Cruces, NM, the New Mexico State University Zuhl Library at 2999 McFie Circle. In Alamogordo, NM, the Alamogordo Public Library, 920 Oregon Avenue.

Public meetings to receive comments on the DEIS will be announced through regional newspapers and other public affairs outlets. These meetings will be held in Alamogordo, Chaparral, and Las Cruces, New Mexico, and in El Paso, Texas, and are expected to occur in November 2009.

Dated: October 26, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health).

[FR Doc. E9–26301 Filed 11–2–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 3, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send email to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 28, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Part 601—Institution and Lender Requirements Relating to Education Loans.

Frequency: On Occasion.

Affected Public: Individuals or households; Not for profit institutions; Private Sector, State, Local or Tribal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 117,162.

Burden Hours: 43,938.

Abstract: Part 601—Institution and Lender Requirements Relating to Education Loans is a new section of the final regulations governing private education loans offered at covered institutions by lenders also participating in the FFEL program. These final regulations provide for new Perkins loan cancellations. These final regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to insure that borrowers receive additional disclosures about Title IV, HEA program assistance prior to obtaining a private education loan.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4048. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–26387 Filed 11–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 3, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to: *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 29, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Federal Pell Grant Program—Two Scheduled Pell Grants in an Award Year.

Frequency: Annually; On Occasion.

Affected Public: Not-for-profit institutions; Private Sector; State, Local or Tribal Gov't.

Reporting and Recordkeeping Hour Burden:

Responses: 847,000.
Burden Hours: 109,605.

Abstract: As provided by the Higher Education Opportunity Act, the regulations would establish that a student would be eligible for a second Scheduled Award of a Pell Grant in a single award year if the student earned in the award year at least the credit hours or clock hours of the first academic year of the student's eligible program, and the student is enrolled on at least a half-time basis (see section 401(b)(5)(A) of the HEA).

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4079. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–26438 Filed 11–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 3, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send email to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 29, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Student Assistance General Provisions—Financial Assistance for Students with Intellectual Disabilities.

Frequency: On Occasion.

Affected Public:

Individuals or household.
Not-for-profit institutions.
State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 400.
Burden Hours: 834.

Abstract: This new regulation allow students with intellectual disabilities who enroll in an eligible comprehensive

transition and postsecondary program, to receive Title IV, HEA program assistance under the Federal Pell Grant, FSEOG, and FWS programs.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4078. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–26446 Filed 11–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—National Longitudinal Transition Study-2 (NLTS2)

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a new system of records entitled ''National Longitudinal Transition Study-2 (NLTS2)'' (18–13–23).

In 2001, the Department funded the NLTS2 to provide a national picture of the characteristics, experiences, and outcomes of secondary school students with disabilities as they complete secondary school and transition to young adulthood. NLTS2 includes the study of a sample of more than 11,000 youth from the population of 13 through 16 year olds receiving special education services in seventh grade or above in December of 2000. The sample is nationally representative of the types of disabilities, as defined by the 12 Federal special education disability categories, in this population.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before December 3, 2009.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House of Representatives Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 29, 2009. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on December 8, 2009, unless OMB waives 10 days of the 40-day review period for compelling reasons shown by the Department, or (2) December 3, 2009, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Jacquelyn Buckley, PhD, National Center for Special Education Research, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510C, Washington, DC 20208–5550. If you prefer to send comments through the Internet, use the following address:*comments@ed.gov*.

You must include the term ''National Longitudinal Transition Study-2 (NLTS2)'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice at the U.S. Department of Education in room 510C, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Buckley. *Telephone number:* (202) 219–2130. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in part 5b of title 34.

The Privacy Act applies to information about an individual that is maintained in a system of records from which individually identifying information is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a system of records notice in the **Federal Register** and to submit, whenever the agency publishes a new system of records or makes a significant change to an established system of records, a report to the Administrator of the Office of Information and Regulatory Affairs, OMB. Each agency is also required to send copies of the report to the Chair of the House of Representatives Committee on Oversight and Government Reform and the Chair of the Senate Committee on Homeland Security and Governmental Affairs.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal**

Register. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara.*

Dated: October 29, 2009.

John Q. Easton,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences (IES) of the U.S. Department of Education (Department) publishes a notice of a new system of records to read as follows:

SYSTEM NUMBER:

18–13–23

SYSTEM NAME:

National Longitudinal Transition Study-2 (NLTS2)

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

(1) SRI International, 333 Ravenswood Ave., Menlo Park, CA 94025–3493. (Contractor)

(2) Research Triangle Institute (RTI), 3040 Cornwallis Rd., Ragland Building, Research Triangle Park, NC 27709–2194. (Subcontractor to SRI)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The NLTS2 system contains records of a sample of more than 11,000 youth from the population of 13 through 16 year olds receiving special education services in seventh grade or above in December of 2000. The sample is nationally representative of the types of disabilities, as defined by the 12 Federal special education disability categories, in this population.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains responses to surveys and interviews administered to students, parents, guardians, administrators, and teachers. The responses may include a student's background and demographic data (e.g., ethnicity, primary language spoken in the student's home), educational experiences, employment experiences, finances, aspirations, plans and goals, family variables (e.g., household income, number of adults living in the household, parental expectations for youth to attend postsecondary school), school characteristics, school programs, classroom experiences, adult services and supports, and early adult outcomes in employment, education, independence, and social domains. Records in this system of records also may include the student's achievement test scores and high school transcript data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation being conducted is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563) and section 664(e) of the Individuals with Disabilities Education Act (20 U.S.C. 1464(e)).

PURPOSE(S):

The information contained in the records maintained in this system is used for the following purpose:

To describe the critical influences, contexts, and educational and post-high school experiences for students with disabilities as they complete secondary education and transition to adulthood. Specifically, this study will examine the sample group of secondary students in special education and: (a) Describe the characteristics of these students and their households; (b) describe these students' secondary school experiences in special education, including their experiences in school, school programs, related services, and extracurricular activities; (c) describe the experiences of these students once they leave secondary school, including their experiences in adult programs and services and social activities; (d) measure the secondary school and post-school outcomes of these students in the education, employment, social, and residential domains; and, e) identify factors in these students' secondary school and post-school experiences that contribute to more positive outcomes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, as amended, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collection, reporting and publication of data by IES.

Contract Disclosure. If the Department contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to only those employees. Before entering into such a contract, the Department will require the contractor to maintain Privacy Act safeguards, as required under 5 U.S.C. 552a(m), with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a database on the contractors' secure servers and in other electronic storage media. Respondent name and contact information is stored separately from the rest of the data collected in this system.

RETRIEVABILITY:

Records in this system are indexed by a unique number assigned to each individual, which is cross-referenced by the individual's name. Records are retrieved by the individual's name or by the unique number.

SAFEGUARDS:

Access to the records is limited to authorized personnel who are briefed regarding confidentiality of the data, are required to sign a written statement attesting to their understanding of the significance of the confidentiality requirement, and have received Department of Education security clearances.

All physical access to the contractor and subcontractor sites where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the buildings for his or her employee or visitor badge.

The computer systems employed by the contractor and subcontractor offer a high degree of resistance to tampering and circumvention. Security systems limit data access to contract staff on a ''need to know'' basis, and control each individual user's ability to access and alter records within the system.

The contractor and subcontractor employees who ''maintain'' (including collect, maintain, use, or disseminate) data in this system of records must comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

In accordance with Part 3, Item 4.b (NC–12–75–1, Item 10b) of the Department's Records Disposition

Schedules, records are destroyed upon verification of transfer to electronic format or upon completion of the report.

SYSTEM MANAGER AND ADDRESS:

Contracting Officer's Representative (COR), National Longitudinal Transition Study-2 (NLTS2), National Center for Special Education Research, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5550.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed under **SYSTEM MANAGER AND ADDRESS**. Your request must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager at the address listed under **SYSTEM MANAGER AND ADDRESS**. Requests should contain your full name, address, and telephone number. Your request must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager at the address listed under **SYSTEM MANAGER AND ADDRESS**. Your request must meet the requirements of the regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is collected from a variety of sources, including parents, guardians, teachers, principals, school records, and students themselves. Records in this system may be collected through methods such as: (a) Telephonic interviews with parents or guardians of students that focus on student and family characteristics, non-school activities, satisfaction with school programs, and activities after high school; (b) telephonic interviews or written questionnaires from students about their experiences and outcomes; (c) teacher surveys about classroom practices and student performance in the classroom; (d) surveys of school programs completed by teachers knowledgeable about the overall program and student performance in a broader context (e.g., instructional settings that comprise a student's whole experience, vocational education, transition planning experiences, and accommodations received); (e) surveys about the characteristics of the school, including aggregate measures of school performance to use as supporting data for reports; (f) student assessments, which involve a direct assessment of the student, including measures of the student's reading and math skills, vocabulary, science and social studies content knowledge, as well as interviews with the student about self-concept and self-determination, or alternate assessments completed by a knowledgeable adult when students are unable to complete a direct assessment due to cognitive or behavioral limitations; and, (g) student transcripts, including courses taken, grades, and attendance.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

[FR Doc. E9–26430 Filed 11–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before January 4, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or by e-mail at *Dana.O'Hara@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8063, *Dana.O'Hara@ee.doe.gov.* The information collection instrument itself is available online at *http://www1.eere.energy.gov/vehiclesandfuels/epact/pdfs/epact_form101.pdf.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5101; (2) Information Collection Request Title: Annual Alternative Fuel Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets; (3) Type of Review: Renewal; (4) Purpose: The information is required so that DOE can determine whether alternative fuel provider and State government fleets are in compliance with the alternative fueled vehicle acquisition mandates of sections 501 and 507(o) of the Energy Policy Act of 1992, as amended, (EPACT), whether such fleets should be allocated credits under section 508 of EPACT, and whether fleets that opted into the alternative compliance program under section 514 of EPACT are in compliance with the applicable requirements; (5) Respondents: Approximately 300; (6) Estimated Number of Burden Hours: 1,651.

Statutory Authority: 42 U.S.C. 13251 *et seq.*

Issued in Washington, DC, on October 26, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–26447 Filed 11–2–09; 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 19, 2009—6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, 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

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Committee Chairs' Comments
- Presentations
- Administrative Issues
- Public Comments
- Final Comments
- Adjourn

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, 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 Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. 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. 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 meetings.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC, on October 29, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–26451 Filed 11–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting Correction.

On October 27, 2009, the Department of Energy published a notice of open meeting announcing a meeting of the Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation to be held on November 18, 2009 (74 FR 55223). In that notice, the main meeting presentation was to be on the Mercury Remediation Strategy and Activities. Today's notice is announcing that the main meeting presentation will be on the History and Status of the White Oak Dams in Melton Valley.

Issued in Washington, DC, on October 29, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–26453 Filed 11–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

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), Portsmouth, Decontamination and Decommissioning (D&D) and Future Land Use (FLU) Committees. 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 10, 2009, 4:30 p.m.

Tuesday, November 10, 2009, 6:30 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov*.

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

4:30 p.m. D&D Committee

- Discussion of key questions from October Retreat
- Developing Path Forward
- Public Comment Period
- Action Items
- Adjourn

6:30 p.m. FLU Committee

- Review of August Summary
- Kentucky Research Consortium for Energy and Environment Presentation on Future Use Project
- Discussion of key questions from October Retreat
- Public Comment Period
- Action Items
- Adjourn

Breaks taken as appropriate.

Public Participation: The meetings are open to the public. The EM SSAB, Portsmouth, 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 David Kozlowski at least seven days in advance of the meeting at the phone number listed above. 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 David Kozlowski 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 meetings 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 meetings.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html.*

Issued at Washington, DC, on October 28, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–26455 Filed 11–2–09; 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. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 17, 2009 8 a.m.–5 p.m.

Opportunities for public participation will be from 1:30 p.m. to 1:45 p.m. and from 3:30 p.m. to 3:45 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, ID 83415. Phone (208) 526–6518; Fax (208) 526–8789 or *e-mail: pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.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 Robert L. Pence for the most current agenda):

- Progress to Cleanup
- InSitu Grouting—Draft Remedial Design and Remedial Action—Work Plan
- Update on Hot Cell Engineering and Evaluation and Cost Analysis
- Radiation Tutorial and Education
- Update on Calcine Record of Decision

Public Participation: The EM SSAB, Idaho National Laboratory, 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 Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. 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 Robert L. Pence 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: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.inlemcab.org/meetings.html.*

Issued at Washington, DC, on October 29, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–26454 Filed 11–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at NYISO Meetings

October 27, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following upcoming NYISO meetings:

- NYISO Business Issues Committee.
- November 5 (Rensselaer, NY).
- December 5 (Rensselaer, NY).
- NYISO Management Committee.
- October 28 (Rensselaer, NY).
- November 19 (Rensselaer, NY).
- December 30 (Rensselaer, NY).
- NYISO ICAP Working Group.
- November 3 (Rensselaer, NY).
- December 8 (Rensselaer, NY).
- NYISO Operating Committee.
- November 12 (Rensselaer, NY).
- December 10 (Rensselaer, NY).
- NYISO Transmission Planning Advisory Committee.
- November 3 (Rensselaer, NY).
- December 1 (Rensselaer, NY).

For additional meeting information, *see http://www.nyiso.com/public/committees/calendar/index.jsp.*

The discussions at each of the meetings described above may address matters at issue in pending proceedings including the following:

Docket Nos. EL07–39 and ER08–695, *New York Independent System Operator, Inc.*

Docket No. EL09–57, *Astoria Gas Turbine Power LLC v. New York Independent System Operator, Inc.*

Docket No. ER09–1142, *New York Independent System Operator, Inc.*

Docket No. ER09–1682, *New York Independent System Operator, Inc.*

Docket Nos. ER01–3001–021/ER03–647–012 and ER01–3001–022/ER03–647–013, *New York Independent System Operator, Inc.*

Docket No. ER09–405, *New York Independent System Operator, Inc.*

Docket No. ER04–449, *New York Independent System Operator, Inc.*

Docket No. OA08–52; *New York Independent System Operator, Inc.*

Docket No. OA09–26; *New York Independent System Operator, Inc.*

The meetings are open to stakeholders. For more information, contact Jesse Hensley, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6228 or *Jesse.Hensley@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26361 Filed 11–2–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0XXX; FRL–8976–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Analysis of Archived Environmental Samples From the American Healthy Homes Survey (New); EPA ICR No. XXXX.XX, OMB Control No. 20XX–XXXX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 4, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0XXX, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov*.
- *Fax:* 202–566–9744.
- *Mail:* Docket ID No. EPA–HQ–ORD–2009–0XXX, Office of Research and Development (ORD) Docket, Environmental Protection Agency, *Mail Code:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0XXX. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* .gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Karen Bradham, National Exposure Research Laboratory, Environmental Protection Agency, Mail Code D205–05, 109 T.W. Alexander Dr., Research Triangle Park, NC 27711; *telephone number:* (919) 541–9414; *fax number:* (919) 541–3527; *e-mail address: Bradham.Karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2009–0XXX, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Title: Analysis of Archived Environmental Samples from the American Healthy Homes Survey (New).

ICR numbers: EPA ICR No. [XXXX.XX], OMB Control No. 20XX–XXXX.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

What Information Collection Activity or ICR Does This Apply to?

Information from respondents was collected during the field collection portion of American Healthy Homes Survey. There is no additional response needed from the respondents or cost burden to respondents resulting from the collection of information because the samples have already been collected.

The proposed analyses described in the ICR will provide EPA with nationally representative data characterizing perfluorinated chemicals (PFCs), polybrominated diphenyl ethers (PBDEs), polychlorinated biphenyls (PCBs), phthalates, and pesticide concentrations currently found in and around U.S. residences. Studies in the scientific literature have reported the presence of these compounds or their degradation products in environmental samples and in human biological samples. However, measurement data for these classes of compounds in U.S. residential media are insufficient in quantity and of variable quality, limiting their usefulness for understanding the sources and pathways of exposure in the general population and developing risk reduction strategies. Analysis of archived environmental samples collected previously in the American Healthy Homes Survey (AHHS) provides an efficient, resource-maximizing approach for obtaining information on these chemicals in and around residential environments.

Perfluorinated compounds (PFCs) are man-made chemicals resistant to chemical, biological, and thermal degradation. They are used as stain-resistant coatings, surfactants, lubricants, fire-fighting foams, and metal-plating mist suppressants. Animal toxicity studies have demonstrated reproductive, developmental, and immune effects. Despite a growing body of literature demonstrating the widespread presence of these compounds in wildlife, environmental samples, and human biological specimens, data on environmental concentrations in indoor environments in the U.S. are sparse, and the pathways of human exposure remain largely unknown.

Polybrominated diphenyl ethers (PBDEs) are brominated chemicals used as fire retardants. Three commercially produced mixtures of PBDEs (penta-, octa-, and deca-BDE) are used in the manufacture of consumer products, primarily blended into plastics, electronics, polyurethane upholstery foams, and textiles. Growing evidence of environmental persistence and bioaccumulation has led to recent changes in production of the penta- and octa- PBDEs. Nonetheless, human exposures to all previously used mixtures are expected to continue during the coming decades as PBDEs are slowly released into the surrounding environment. Animal toxicity testing suggests that PBDEs of lower bromination disrupt thyroid hormones and cause neurobehavioral deficits and that deca-PBDE is a possible carcinogen. Due to the concerns related to ubiquitous distribution of these chemicals, their persistence, rising body burdens, potential for human health effects, elevated risks to children, and increasing industrial demand, the EPA needs representative data on concentrations of PBDEs in house dust in residential settings across the U.S.

Phthalates are used in the manufacture of a wide range of industrial and household consumer products to prolong durability and increase the flexibility of plastics and as chemical stabilizers for other materials. Animal data suggest a broad spectrum of potential health outcomes including developmental toxicity, endocrine disruption, and carcinogenicity. However, the characterization of human exposure to phthalates is limited and the National Toxicology Program's Center for the Evaluation of the Risks to Human Reproduction has concluded that more data regarding the potential for human exposure are needed.

Polychlorinated biphenyls (PCBs) are man-made mixtures of chemicals, which have chemical properties that make them resistant to chemical, biological, and thermal degradation. Data on environmental concentrations show that indoor air exposures to PCBs are more significant than outdoor exposures. Sources of PCBs in an indoor environment include PCB-containing caulk, floor finishes, old electronic products, and fluorescent lighting. PCBs tend to bioaccumulate, leading to dietary exposures through fish, meat, dairy and processed foods. Dietary exposure is considered the major source of exposure but with a steady decrease in bioaccumulation, inhalation and indirect ingestion become an increasingly important route of exposure to children. Results from the AHHS will provide high quality baseline distributional data describing real-world concentrations of PCBs in U.S. residences, allowing EPA to better understand their presence and variability in the home environment.

Pesticides are needed to control insects and other pests on crops and in both indoor and outdoor environments. The potential health effects of pesticides vary by type but may include developmental neurotoxicity and endocrine disruption. Children are uniquely vulnerable to pesticide exposures given their hand-to-mouth behaviors, floor play, and developing nervous system. The Food Quality Protection Act of 1996 requires EPA to consider aggregate risks (exposures through all routes and pathways). Information on potential exposures to these chemicals through dust- and soil-related pathways will supplement existing AHHS surface wipe results, providing a more complete assessment of children's exposures to pesticides in their homes.

This proposed analysis will be used to develop a nationally representative database to assess current status and future trends, investigate regional variability, evaluate relationships between indoor and outdoor concentrations, characterize exposure routes and pathways, and evaluate suspected occupant- and housing-related determinants of exposure. The real-world data will be particularly useful for developing, evaluating, and improving ORD's modeling tools for estimating, classifying, and predicting human exposure. These data will be available throughout the Agency to refine risk assessments and enhance the Agency's risk assessment/management strategies.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes

of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Members of Affected Public	0
Total Burden Estimate	0
Frequency of respondents	0
Hours per responses	0
Burden response	0
Respondents	0
Total Estimated Burden Hours	0

There is no additional time or costs to respondents needed for additional analyses of the environmental samples because these samples have already been collected.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: October 26, 2009.

Jewel F. Morris,

Deputy Director, National Exposure Research Laboratory.

[FR Doc. E9–26414 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8974–4]

Announcement of the Board of Trustees for the National Environmental Education Foundation

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The National Environmental Education Foundation (NEEF) 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 Foundation Board of Trustees. The appointee is Kenneth Olden, Chairman, Avon Foundation Scientific Advisory Board.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice of Appointment, please contact Mr. Andrew Burnett, Director, Environmental Education Division, Office of Children's Health Protection and Environmental Education (1704A) U.S. EPA 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information concerning NEEF can be found on their Web site at: *http://www.neefusa.org.*

SUPPLEMENTARY INFORMATION:

Additional Considerations: Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education. This appointment is a four-year term which may be renewed once for an additional four years pending successful re-election by the NEEF nominating committee.

This appointee will join the current Board members which include:

JL Armstrong (NEEF Vice Chair), National Manager, Toyota Motor Sales, USA, Inc.

Raymond Ban, Executive Vice President, The Weather Channel.

Holly Cannon, Principal, Beveridge and Diamond, P.C.

Phillipe Cousteau, Co-Founder and CEO, EarthEcho International.

Arthur Gibson (NEEF Chair), Vice President, Environment, Health and Safety, Baxter Healthcare Corporation.

Trish Silber, President, Aliniad Consulting Partners, Inc.

Bradley Smith, Dean, Huxley College of the Environment, Western Washington University.

Kenneth Strassner (NEEF Treasurer), Vice President, Global Environment, Safety, Regulatory and Scientific Affairs, Kimberly-Clark Corporation.

Diane Wood (NEEF Secretary), President, National Environmental Education Foundation.

Background: Section 10(a) of the National Environmental Education Act of 1990 mandates a National Environmental Education Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States. The purposes of the Foundation are—

(A) Subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) To conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) To participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems

involving the United States and Canada or Mexico.

The Foundation develops, supports, and/or operates programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

The Foundation has a governing Board of Directors (hereafter referred to in this section as 'the Board'), which consists of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board oversees the activities of the Foundation and assures that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of the Act. The membership of the Board, to the extent practicable, represents diverse points of view relating to environmental education and training. Members of the Board are appointed by the Administrator of the Environmental Protection Agency.

Within 90 days of the date of the enactment of the National Environmental Education Act, and as appropriate thereafter, the Administrator will publish in the **Federal Register** an announcement of appointments of Directors of the Board. Such appointments become final and effective 90 days after publication in the **Federal Register**. The directors are appointed for terms of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

Dated: October 22, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–26336 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8974–2; Docket ID No. EPA–HQ–ORD–2009–0791]

Draft Toxicological Review of Trichloroethylene: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a public comment period for the external review draft document titled, ''Toxicological Review of Trichloroethylene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–09/011A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within the EPA's Office of Research and Development (ORD). The public comment period and the EPA Science Advisory Board (SAB) peer-review workshop, which will be scheduled at a later date and announced in the **Federal Register**, are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted in accordance with this notice to the SAB peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period begins November 3, 2009, and ends February 1, 2010. Technical comments should be in writing and must be received by EPA by February 1, 2010. Due to the schedule of the SAB peer-review meeting, EPA cannot entertain any request for an extension of the public comment period.

ADDRESSES: The draft ''Toxicological Review of Trichloroethylene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

If you have questions about the document, contact Weihsueh Chiu, National Center for Environmental Assessment (NCEA), Two Potomac Yard (North Building), 2733 S. Crystal Drive, Arlington VA 22202; telephone: 703–347–8607; facsimile: 703–347–8692; or e-mail: *chiu.weihsueh@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0791 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0791. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: October 20, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–26411 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[MN88; FRL–8975–1]

Notice of Issuance Federal Operating Permit to Grand Casino Mille Lacs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that, on August 27, 2009, pursuant to Title V of the Clean Air Act, EPA issued a Title V Permit to Operate (Title V permit) to Mille Lacs Band Corporate Commission (Grand Casino Mille Lacs). This permit authorizes Grand Casino Mille Lacs to operate its four diesel-fired generator sets (generators) at its facility (Facility) in Onamia, Minnesota. The electricity produced from the generators can be used for peak load management, as well as backup power for the Grand Casino Mille Lacs Resort and Hotel, which is located on lands held in trust for the Mille Lacs Band of Ojibwe Indians, and which is located within the boundaries of the Mille Lacs Indian Reservation.

DATES: During the public comment period, which ended August 12, 2009, EPA received no comments on the draft Title V permit. Therefore, in accordance with 40 CFR 71.11(i)(2)(iii), this permit became effective immediately upon permit issuance, August 27, 2009.

ADDRESSES: The final signed permit is available for public inspection online at *http://yosemite.epa.gov/r5/r5ard.nsf/Tribal+Permits!OpenView,* or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Angelbeck, Environmental Scientist, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–9698, or *angelbeck.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Is the Background Information?
B. What Is the Purpose of this Notice?

A. What Is the Background Information?

The four diesel-fired generators are owned by Grand Casino Mille Lacs. The total generation capacity of the generators is 6.6 megawatts. The electricity produced from the generators can be used for peak load management, as well as backup power, and is not sold for distribution.

Since the potential emissions from the existing three generators were estimated to be greater than 250 tons per year (tpy) for nitrogen oxides (NO_X), in accordance with 40 CFR 52.21(b)(1), the Facility is considered a major stationary source and subject to the Prevention of Significant Deterioration (PSD) permitting requirements. As required by 40 CFR part 52, Grand Casino Mille Lacs applied to EPA for a PSD permit for the original three generators and conducted a Best Available Control Technology (BACT) analysis, an air quality analysis, and the additional impact analyses. EPA received the permit application on October 13, 2006. The Federal PSD construction permit (No. PSD–ML–R50007–05–01) that EPA issued to the Facility contained all applicable part 52 requirements. Within this permit, the Facility also chose to accept a 300-hour per year operating limit per generator, restricting the Facility's potential to emit (PTE) emissions.

Since Grand Casino Mille Lacs is considered a major source, was issued a PSD permit, and is located on tribal land, in accordance with 40 CFR 71.3(a), the Facility is subject to Title V permitting requirements of 40 CFR part 71.

The construction of the fourth generator did not trigger PSD for two reasons. First, the 2005 PSD permit established a facility-wide PTE for all regulated pollutants, before the fourth generator was installed, of less than 250 tpy (*i.e.*, not a major source), so that the addition of the fourth generator did not constitute a modification to a major stationary source. In addition, the PTE of the fourth generator is 209 tpy which is also below the 250-ton PSD threshold for a major source. In its part 71 permit application, Grand Casino Mille Lacs requested that EPA incorporate the original three generator sets, as well as the fourth generator, into this Title V permit. As noted above, the original

three generators each have an annual operating restriction of 300 hours per year. The fourth generator does not have any legal restriction on hours of operation. The maximum, unrestricted emissions for the fourth generator is 209 tpy of NO_X.

On July 12, 2009, EPA made available for public comment a draft Federal Title V Permit to Operate (No. V–ML–2709500005–2009–01). This Title V permit incorporated all applicable air quality requirements for the four generators, including the monitoring necessary to ensure compliance with these requirements. In accordance with the requirements of 40 CFR 71.11(d), EPA provided the public with 30 days to comment on the draft permit. Since EPA did not receive any written comments, EPA finalized the permit and provided copies to the applicant pursuant to 40 CFR 71.11(i).

EPA is not aware of any outstanding enforcement actions against Grand Casino Mille Lacs and believes the issuance of this permit is non-controversial.

B. What Is the Purpose of This Notice?

EPA is notifying the public of the issuance of the Title V permit to Grand Casino Mille Lacs on August 27, 2009. Because EPA received no comments on the draft Title V permit, it became effective immediately upon issuance, pursuant to 40 CFR 71.11(i)(2)(iii).

Dated: October 19, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–26413 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8977–4]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board Ecological Processes and Effects Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Ecological Processes and Effects Committee Augmented for the Review of Nutrient Criteria Guidance. The Committee will discuss its draft advisory report.

DATES: The public teleconference will be held on December 3, 2009 from 12 (noon) to 2 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone/voice mail:* (202) 343–9995; fax (202) 233–0643; or via e-mail at: *armitage.thomas@epa.gov*. General information about the EPA SAB, as well as any updates concerning the teleconference announced in this notice, may be found on the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the SAB Ecological Processes and Effects Committee Augmented for the Review of Nutrient Criteria Guidance will hold a public teleconference to discuss its draft advisory report. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Office of Water has requested that the SAB review the draft guidance document, *Empirical Approaches for Nutrient Criteria Derivation*. This document provides information on the use of empirical approaches to describe stressor-response relationships for deriving numeric nutrient criteria. The SAB Ecological Processes and Effects Committee, augmented with additional experts, held a meeting on September 9–11, 2009 to review the EPA guidance document. A **Federal Register** notice dated August 18, 2009 (74 FR 41696–41697) announced the meeting and provided background information on this advisory activity. Information on the process of augmenting the expertise on the SAB Ecological Processes and Effects Committee was provided in a **Federal Register** notice dated April 27, 2009 (74 FR 19084–19085). The purpose of this upcoming teleconference is for the Committee to discuss its draft advisory report. Additional information about this advisory activity can be found on the SAB Web site at *http://www.epa.gov/sab*.

Availability of Meeting Materials: The teleconference agenda and other materials including the SAB Committee's draft report will be placed on the SAB Web site at *http://www.epa.gov/sab/* in advance of the teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Dr. Armitage, DFO, in writing (preferably via e-mail) at the contact information noted above, by November 24, 2009 to be placed on the list of public speakers for the teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office no later than November 30, 2009 so that the information may be made available to the SAB Panel members for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 28, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–26418 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8976–7]

Proposed CERCLA Administrative Cost Recovery Settlement: APCO Mossberg Company, Inc., Superfund Site, Attleboro, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past costs concerning the APCO Mossberg Company, Inc., Superfund Site in Attleboro, Massachusetts, with settling party Morton D. Cross. The settlement requires the settling party to pay $50,000, plus an additional sum for interest on that amount calculated from July 1, 2009 through the date of payment, to the Hazardous Substance Superfund. The settlement includes a covenant not to sue for the settling party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received relating to the settlement and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments will be available for public inspection at One Congress Street, Boston, MA 02114–2023.

DATES: Comments must be submitted not later than December 3, 2009.

ADDRESSES: Comments should be addressed to, Mary Jane O'Donnell, Chief, ME/VT/CT Superfund Section, U.S. Environmental Protection Agency, One Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114–2023 and should refer to the APCO Mossberg Company, Inc., Superfund Site, U.S. EPA Docket Number CERCLA 01–2009–0085.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Mary Jane O'Donnell, Chief, ME/VT/CT Superfund Section, U.S. Environmental Protection Agency, One Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114–2023 (Telephone No. 617–918–1371; e-mail *odonnell.maryjane@epa.gov*).

Dated: October 26, 2009.

James T. Owens, III,

Director, Office of Site Remediation and Restoration.

[FR Doc. E9–26416 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, November 3, 2009, at 10 a.m.; Wednesday, November 4, 2009, at 10 a.m. to 11 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: These Meetings Will be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Wednesday, November 4, 2009, at 2 p.m. to 3 p.m.

PLACE: 999 F Street, NW., Washington, DC.

STATUS: This Hearing will be Open to the Public.

AUDIT HEARING: Tennessee Democratic Party.

* * * * *

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–26299 Filed 11–2–09; 8:45 am]

BILLING CODE 6715–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Nebraska Avenue Complex Master Plan To House Components of the Department of Homeland Security

AGENCY: General Services Administration (GSA), National Capital Region.

ACTION: Notice.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), GSA Order PBS P1095.1F (Environmental considerations in decisionmaking, dated October 19, 1999), and the GSA Public Buildings Service NEPA Desk Guide, GSA plans to prepare an Environmental Impact Statement (EIS) for the proposed Master Plan to guide future development of a campus for the Department of Homeland Security (DHS) at the Nebraska Avenue Complex (NAC). GSA will be initiating related consultation with the District of Columbia State Historic Preservation Officer and the Advisory Council on Historic Preservation under Sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470(f) and 470(h–2)).

FOR FURTHER INFORMATION CONTACT: Suzanne Hill, NEPA Lead, General Services Administration, National Capital Region, at (202) 205–5821. Please also call this number if special assistance is needed to attend and participate in the public scoping meeting.

SUPPLEMENTARY INFORMATION: The notice of intent is as follows:

Notice of Intent To Prepare an Environmental Impact Statement

The General Services Administration intends to prepare an EIS to analyze the potential impacts resulting from the proposed Master Plan for the NAC. The master plan will guide the future development of a campus for DHS at the NAC.

Background

The purpose of the proposed action is to develop a Master Plan for the NAC Campus at the appropriate security level to house DHS. It is intended that the Master Plan will guide future renovation and development of the campus by establishing design and land-use planning principles for the construction of new buildings, roadways, open green

space, utility systems, and other infrastructure needs, while minimizing environmental, economic, and social impacts. The Master Plan's design and planning principles will encourage the preservation and rehabilitation of the NAC's historic landscape and buildings.

The NAC Master Plan is needed to support the goals of the DHS National Capital Region Housing Master Plan which proposes to consolidate 28,000 DHS employees currently housed in approximately 48 locations into approximately 8 locations. The extreme dispersion of DHS components imposes significant inefficiencies in daily operations which can be magnified at the most critical moments when the department must act as an integrated team responding to significant natural disasters or terrorist threats. In order to fulfill DHS' significant space needs, GSA continues to explore various locations for DHS facilities throughout the National Capital Region. The NAC is identified in the DHS NCR Housing Master Plan as a viable site for certain DHS components.

In order to strengthen DHS operational management capabilities, the DHS NCR Housing Master Plan suggests that DHS employees continue to be housed at the NAC—one of the few locations in Washington, DC that can achieve the Interagency Security Committee (ISC) requirements for an ISC Level V secure campus. DHS' NCR-wide consolidation efforts could result in new or additional components to be housed at the NAC; therefore, a Master Plan is needed to guide any anticipated new facility, security, or infrastructure requirements.

Further, a NAC Master Plan is needed to serve as a guide that will provide for functional flexibility in serving programmatic changes related to the evolving mission of DHS. The NAC Master Plan will steer long range campus construction, renovation, and maintenance to serve DHS mission needs. There is a need for a comprehensive plan at the NAC to guide federal investment to maintain, improve or construct new campus facilities, security, and infrastructure.

In December 2008, GSA issued a Record of Decision for the DHS Consolidated Headquarters at St. Elizabeths in Washington, DC and an EIS is underway for the remaining DHS Headquarters Consolidation requirement at the St. Elizabeths East Campus.

Alternatives Under Consideration

GSA will analyze a range of alternatives including the no action alternative for the proposed NAC Master Plan. As part of the EIS, GSA will study the impacts of each alternative on the human environment.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the alternatives to be considered and the scope of issues to be addressed, as well as for identifying the significant issues related to the proposed Master Plan to guide the future development of the campus. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with agencies having an interest in the NAC. It is important that federal, regional, state, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS.

GSA is also using the NEPA scoping process to facilitate consultation with the public under Section 106 of the National Historic Preservation Act (36 CFR Part 800). GSA welcomes comments from the public to ensure that it takes into account the effects of its action on historic and cultural resources.

Public Scoping Meeting

The public scoping meeting will be held on Tuesday, November 17, 2009 from 7 p.m. until 9 p.m. at Horace Mann Elementary School, Multipurpose Community Center Building, located at 4430 Newark Street, NW., Washington, DC 20016. The meeting will be an informal open house, where visitors may come, receive information, and provide comments. GSA will publish notices in the Washington Post and local newspapers announcing this meeting approximately two weeks prior to the meeting and will prepare a scoping report, available to the public, that will summarize the comments received and facilitate their incorporation into the EIS and Section 106 processes.

Written Comments: Agencies and the public are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, providing comments at the public scoping meeting. Written comments regarding the environmental analysis for the proposed Master Plan must be postmarked no later than December 4, 2009, and sent to the General Services Administration, *Attention:* Suzanne Hill, NEPA Lead, 301 7th Street, SW., Room 7600, Washington, DC 20407, or via e-mail to *Suzanne.Hill@gsa.gov.*

Dated: October 27, 2009.

Patricia T. Ralston,

Director, Portfolio Management, National Capital Region, Public Buildings Service.

[FR Doc. E9–26436 Filed 11–2–09; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HHS Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Stakeholders Workshop 2009 and BARDA Industry Day

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is pleased to announce the upcoming HHS Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Stakeholders Workshop 2009 and BARDA Industry Day to be held December 2–4, 2009, at the Marriott Wardman Park Hotel in Washington, DC. This annual PHEMCE event will bring together private- and public-sector stakeholders including: Federal Officials, International Governments, Industry, Healthcare Providers, First Responders, Community-Based Organizations, and other interested audiences. Attendees will have opportunities to participate in forums on:

- Best Practices for Dispensing Medical Countermeasures
- Current and Future PHEMCE Initiatives
- Maximizing Resources in a Public Health Emergency Response
- Medical Countermeasure Development Initiatives
- The Regulatory Pathway for Medical Countermeasures
- BARDA Industry Day Presentations

This free Workshop will also address plans to enhance national response capabilities and the current state of public health emergency medical countermeasure preparedness. There will be a joint plenary session on Wednesday, December 2nd with HHS Public Health Emergency Medical Countermeasure Enterprise Stakeholders Workshop 2009 and the American Medical Associations Third National Congress on Health System Readiness.

BARDA Industry Day provides a unique opportunity for biotechnology and pharmaceutical industry representatives to showcase their latest breakthroughs in vaccines, therapeutics, diagnostics, and platform technologies targeting chemical, biological, radiological, nuclear, and naturally

emerging threats, including pandemic influenza.

DATES: The Stakeholders Workshop 2009 & BARDA Industry Day will be held December 2–4, 2009. Each day will begin at 9 a.m.

ADDRESSES: The Workshop will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Registration: There is no fee to attend; however, space is limited and registration is required. Registration and the preliminary agenda are available online at: *http://www.medicalcountermeasures.gov.*

FOR FURTHER INFORMATION CONTACT: L. Paige Rogers, Office of the Biomedical Advanced Research and Development Authority, Office of the Assistant Secretary for Preparedness and Response at 330 Independence Ave., SW., Room G640, Washington, DC 20201, e-mail at *BARDA @ hhs.gov,* or by phone at 202–260–1200.

Dated: October 27, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response Rear Admiral, U.S. Public Health Service.

[FR Doc. E9–26375 Filed 11–2–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project Title: Combating Autism Act Initiative Evaluation (New)

Background: In response to the growing need for research and resources devoted to autism spectrum disorder (ASD) and other developmental disorders (DD), the U.S. Congress passed the Combating Autism Act (CAA) in 2006. This Act authorized federal programs to combat ASD and other DD through research, screening, intervention, and education. Through the CAA, the Health Resources and Services Administration (HRSA) is tasked with increasing awareness of ASD and other DD, reducing barriers to screening and diagnosis, promoting evidence-based interventions, and training health care professionals in the use of valid and reliable screening and diagnostic tools.

Purpose: HRSA's activities under this legislation are conducted by the Maternal and Child Health Bureau (MCHB), which is implementing the Combating Autism Act Initiative (CAAI) in response to the legislative mandate. The purpose of this evaluation is to design and implement a three-year evaluation to assess the effectiveness of MCHB's activities in meeting the goals and objectives of the CAAI, and to provide sufficient data to inform MCHB and the Congress as to the utility of the grant programs funded under the Initiative. To address the requirements for the Report to Congress, the evaluation will focus on short-term indicators related to: (1) Increasing awareness of ASD and other DD among health care providers, other MCH professionals and the general public; (2) reducing barriers to screening and diagnosis; (3) supporting research on evidence-based interventions; (4) promoting the development of evidence-based guidelines and tested/validated intervention tools; and (5) training professionals.

Respondents: Grantees funded by HRSA under the CAAI will be the respondents for this data collection activity. The programs to be evaluated are listed below.

1. Training Programs

- Leadership Education in Neurodevelopmental Disabilities (LEND) training programs with thirty nine grantees.
- Developmental Behavioral Pediatrics (DBP) training programs with six grantees; and
- A National Combating Autism Interdisciplinary Training Resource Center grantee.

2. Research Programs

- Two Autism Intervention Research Networks that focus on intervention research, guideline development, and information dissemination;
- Five R40 Maternal and Child Health (MCH) Autism Intervention Research Program grantees that support research on evidence-based practices for interventions to improve the health and well-being of children and adolescents with ASD and other DD; and
- Two R40 MCH Autism Intervention Secondary Data Analysis Study (SDAS) Program grantees that support research on evidence-based practices for interventions to improve the health and well-being of children and adolescents with ASD and other DD, utilizing exclusively the analysis of existing secondary data.

3. State Implementation Program Grants for Improving Services for Children and Youth With Autism Spectrum Disorder (ASD) and Other Developmental Disabilities (DD)

- Nine grantees will implement state autism plans and develop models for improving the system of care for children and youth with ASD and other DD and
- A State Public Health Coordinating Center grantee.

The data gathered through this evaluation will be used to:

- Evaluate the grantees' performance in achieving the objectives of the CAAI during the three year grant period;
- Assess the short- and intermediate-term impacts of the grant programs on children and families affected by ASD and other DD;
- Measure the CAAI outputs and outcomes for the Report to Congress; and
- Provide foundation data for future measurement of the initiative's long-term impact.

TABLE 1—ESTIMATED HOUR AND COST BURDEN OF THE DATA COLLECTION

Grant program	No. of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden	Wage rate	Total hour cost
LEND	39	6	234	.75	175.5	$39.36	$6,907.68
DBP	6	6	36	.75	27	39.36	1,062.72
State Implementation Program	9	6	54	.75	40.5	38.22	1,547.91
Research Program	9	6	54	.75	40.5	39.36	1,594.08
Total	63		378		283.5		11,112.39

The estimated response burden is shown in Table 1.

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 22, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–26394 Filed 11–2–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–10–10AD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov*.

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 a 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 information technology. Written comments should be received within 60 days of this notice.

Proposed Project

School Dismissal Monitoring System—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

During the spring 2009 H1N1 outbreak, the U.S. Department of Education (ED) and the Centers for Disease Control and Prevention (CDC) received numerous daily requests about the overall number of school dismissals nationwide including the number of students and teachers impacted by the outbreak. Illness among school-aged students (K–12) in many states and cities resulted in at least 1351 school dismissals due to rapidly increasing absenteeism among students or staff that impacted at least 824,966 students and 53,217 teachers.

Although a system was put in place to track school closures in conjunction with the Department of Education (ED), no formal monitoring system was established, making it difficult to monitor reports of school dismissal and to gauge the impact of the outbreak.

CDC has recently issued guidance for school closure for the 2009–2010 school year. To address the need to monitor reports of school closure, CDC and ED have established a School Dismissal Monitoring System to report on novel influenza A (H1N1)-related school or school district dismissals in the United States. Although the School Dismissal Monitoring System is currently approved to collect data under OMB Control Number 0920–0008, Emergency Epidemic Investigations, CDC would like to continue the data collection long term. Thus, CDC is requesting a separate OMB Control Number for this data collection.

The purpose of the School Dismissal Monitoring System is to generate accurate, real-time, national summary data daily on the number of school dismissals and the number of students and teachers impacted by the school dismissals. CDC will use the summary data to fully understand how schools are responding to CDC community mitigation guidance among schools, students, household contacts and for overall awareness of the impact of influenza outbreaks on school systems and communities.

Respondents are schools, school districts, and local public health agencies. Respondents will use a common reporting form to submit data to CDC. The reporting form includes the following data elements: Name of school district; zip code of school district; date the school or school district was dismissed; and the date school or school district is projected to reopen. Optional data elements include: name of person submitting information; the organization/agency; phone number of the organization/agency; and e-mail address. There is no cost to respondents other than their time to complete the data collection.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondent	Number of respondents	Responses per respondent	Average burden per respondent (in hours)	Total burden (in hours)
School, school district or public health department	100	1	5/60	8
Total				8

Dated: October 27, 2009.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–26398 Filed 11–2–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09BD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Field Evaluation of Prototype Kneel-assist Devices in Low-seam Mining—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

According to the Mining Safety and Health Administration (MSHA) injury database, 227 knee injuries were reported in underground coal mining in 2007. With data from the National Institute for Occupational Safety and Health (NIOSH), it can be estimated that the financial burden of knee injuries was nearly three million dollars in 2007.

Typically, mine workers utilize kneepads to better distribute the pressures at the knee. The effectiveness of these kneepads was only recently investigated in a study by NIOSH that has not yet been published. The results of this study demonstrated that kneepads do decrease the maximum stress applied to the knee albeit not drastically. Additionally, the average pressure across the knee remains similar to the case where subjects wore no kneepads at all. Thus, the injury data and the results of this study suggest the need for the improved design of kneel-assist devices such as kneepads. NIOSH is currently undertaking the task of designing more effective kneel-assist devices such as a kneepad and a padded support worn at the ankle where mine workers can comfortably rest their body weight.

These devices must also be field tested to verify they do not result in body discomfort or inadvertent accidents. It is also important to determine how usable and durable these devices are in the harsh mining environment. In order to quantitatively demonstrate that these prototype devices are superior to their predecessors, mine workers using these prototypes must be interviewed. Their feedback will identify any necessary changes to the design of the devices such that NIOSH can ensure the prototypes will be well-accepted by the mining community.

To collect this type of information, a field study must be conducted where kneel-assist devices currently used in the mining industry (i.e. kneepads) are compared to the new prototype designs. The study suggested here would take approximately 13 months.

Phase I of this study will evaluate the prototype kneel-assist device by mine workers after being used for one month. Iterative changes will be made to the design based on the feedback obtained during Phase I. Data will be collected via interviews with individual mine workers and through a focus group where all mine workers come together to express their opinions about the devices. If the prototype kneel-assist devices do not appear to be successful, the data collected will be used to adequately redesign them and the above described process will begin again. If the prototype kneel-assist devices appear to be successful, Phase II of the study will commence.

Once Phase II of the study is ready to commence, cooperating mines will be identified. Every month, the section foreman at the cooperating mines will be asked to supply some information regarding the current mine environment.

Initially, the mine workers will be given a control kneel-assist device. Currently, mine workers only utilize kneepads as a kneel-assist device. Therefore, only a control kneepad will be provided. They will then be asked some basic demographics information such as their age and time in the mining industry. Additional data will then be collected at 1, 3, and 6 months after the study commences. The mine workers will be asked to provide their feedback regarding factors such as body part discomfort, usability, durability, and ease of movement with respect to the control kneepad. After evaluating the control kneepad, mine workers will then be given the prototype kneel-assist device that was finalized in Phase I of the study. The same questions that were asked about the control kneepad will again be asked at 1, 3, and 6 months after usage begins of the prototype. Thus, Phase II of the study will last 12 months.

There will be no cost to the respondents/subjects other than their time. The total burden hours are estimated to be 182.

ESTIMATED ANNUALIZED BURDEN HOURS

	Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Phase I	Section Foreman	Phase I Section Foreman Form.	1	1	10/60
	Mine Workers	Phase I Baseline Form	9	1	20/60
	Mine Workers	Phase I 1 month form	9	1	30/60
	Mine Workers	Phase I Focus Group Questions.	9	1	1
Phase II	Section Foreman	Phase II Section Foreman Form.	6	12	10/60
	Mine Workers	Phase II Baseline Form	54	1	20/60
	Mine Workers	Phase II 1, 3, and 6 months forms.	54	6	25/60

Dated: October 28, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–26395 Filed 11–2–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0524]

Draft Guidance for Industry on Listing of Ingredients in Tobacco Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Listing of Ingredients in Tobacco Products.'' The draft guidance document is intended to assist persons making tobacco product ingredient submissions to FDA as required by section 904 of the Federal Food, Drug, and Cosmetic Act (the act) as added by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by November 13, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Listing of Ingredients in Tobacco Products'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance document may be sent.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Michele Mital, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 301–796–4800, *Michele.Mital@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Tobacco Control act (Public Law 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 904(a)(1) of the act, as amended by the Tobacco Control Act, requires each tobacco product manufacturer or importer, or agent thereof, to submit ''a listing of all ingredients, including tobacco, substances, compounds, and additives that are * * * added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.'' Since the Tobacco Control act was enacted on June 22, 2009, the information required under section 904(a)(1) must be submitted to FDA by December 22, 2009, and include the ingredients added as of the date of submission. While electronic submission of ingredient listing information is not required, FDA is strongly encouraging electronic submission to facilitate efficiency and timeliness of data management and collection. To that end, FDA designed the eSubmitter application to streamline the data entry process for ingredient listing. This tool allows for importation of large quantities of structured data, attachments of files (e.g., in portable document format (PDFs) and certain media files), and automatic acknowledgement of FDA's receipt of submissions.

II. Significance of Guidance

FDA is issuing this draft guidance document 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 ''Listing of Ingredients in Tobacco Products.'' 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. 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. The guidance

document and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

This draft guidance contains proposed collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). As required by the PRA, FDA has published an analysis of the information collection concerning the submission of ingredient information (74 FR 45219, September 1, 2009, as corrected by 74 FR 47257, September 15, 2009) and will submit it for OMB approval.

V. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*

Dated: October 29, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26466 Filed 10–30–09; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for the Prevention of Intravascular Catheter-Related Infections

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the *Draft Guideline for the Prevention of Intravascular Catheter-Related Infections,* available on the following Web site: *http://www.cdc.gov/publiccomments/*.

This document is for use by infection prevention staff, healthcare epidemiologists, healthcare administrators, nurses, other healthcare providers, and persons responsible for developing, implementing, and evaluating infection prevention and control programs for healthcare settings across the continuum of care. The guideline updates and expands the *Guideline for the Prevention of Intravascular Device-Related Infections* published in 2002. These guidelines provide evidence-based recommendations for preventing intravascular catheter-related infections.

DATES: Comments must be received on or before December 3, 2009.

ADDRESSES: Comments on the *Draft Guideline for the Prevention of Intravascular Catheter-Related Infections* should be submitted by e-mail to *BSI@cdc.gov* or by mail to CDC, Division of Healthcare Quality Promotion, Attn: Resource Center, 1600 Clifton Rd., NE., Mailstop A–31, Atlanta, Georgia 30333; or by fax 404–639–4049.

Dated: October 27, 2009.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–26393 Filed 11–2–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Career Development & Fellowship Applications.

Date: November 4, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Raul A Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Nsc; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; K01 Conflict Review.

Date: November 19, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Joann Mcconnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; K99 Special Review.

Date: November 20, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Joann Mcconnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25923 Filed 11–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0523]

Product Tracing Systems for Food; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comment.

SUMMARY: The Food and Drug Administration (FDA), in collaboration with the United States Department of Agriculture, Food Safety and Inspection Service (FSIS), is announcing a public meeting regarding product tracing systems for food intended for humans

and animals. The purpose of the meeting is to stimulate and focus a discussion about mechanisms to enhance product tracing systems for food. This discussion will help FDA and FSIS determine what short and long term steps the two agencies should take to enhance the current tracing system.

DATES: See ''How to Participate in the Meetings'' in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: See ''How to Participate in the Meetings'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

For electronic registration, electronic requests to make an oral presentation during the time allotted for public comment at the meeting, logistics, or to request a sign language interpreter or other special accommodation due to a disability: Sheila Johnson, Congressional and Public Affairs, 1400 Independence Ave., SW., Washington, DC, 20250, 202–690–6498, e-mail: *Sheila.Johnson@fsis.usda.gov*.

FSIS: *For questions about meat, meat food products, poultry, poultry products, and egg products*: William Smith, Assistant Administrator, Office of Program Evaluation, Enforcement & Review, rm. 3133, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, 20250, 202–720–8609.

FDA: *For non-electronic registration (i.e., registration by mail, fax, e-mail, or phone), for submission of written material for an oral presentation, and for questions about all other food*: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–009), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1731, toll-free FAX: 1–877–366–3322, e-mail: *Juanita.Yates@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Meeting

As discussed more fully in section IV.A of this document, Federal food safety agencies need to increase the speed and accuracy of traceback investigations and traceforward operations. FDA and FSIS intend the public meeting to stimulate and focus a discussion about the core elements of product tracing systems, gaps in current product tracing systems, and mechanisms to enhance product tracing systems for food. FDA and FSIS also intend the public meeting to improve the ability of FDA and FSIS to use the information in such systems to identify the source of contamination during outbreaks of foodborne illness, and to improve the ability of all persons in the supply chain to more quickly identify food that is (or potentially is) contaminated and remove it from the market during traceforward operations. This discussion will help FDA and FSIS determine what short and long term steps each agency should take to enhance the current tracing system.

For purposes of this document, the term ''food'' applies to both food for humans and food for animals.[1] As defined by the Codex Alimentarius Commission (Codex),[2] traceability/product tracing is the ability to follow the movement of a food through specified stage(s) of production, processing, and distribution (Ref. 1).

II. How to Participate in the Meeting

Stakeholders will have an opportunity to provide oral comments. Due to limited space and time, and to facilitate entry to the building in light of security procedures, FDA and FSIS encourage all persons who wish to attend the meeting, including those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meeting, to register in advance. Depending on the number of requests for such oral presentations, there may be a need to limit the time of each oral presentation (e.g., 5 minutes each). If time permits, requests may be granted for an opportunity to make such an oral presentation from individuals or organizations that did not register in advance. Table 1 of this document provides information on participation in the meetings and on submitting comments to the Docket established for the meeting.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS

	Date	Address	Electronic Address	Other Information
Public meeting	December 9 and 10, 2009, from 9 a.m. until 5 p.m.	Jefferson Auditorium at the U.S. Department of Agriculture (South Building), 1400 Independence Ave., SW., Washington, DC, 20250 (Metro stop: Smithsonian Metro Station on the blue and orange lines, take the Independence Ave. exit)		Attendees must provide a picture ID to enter the building. The Jefferson auditorium is located at Wing 6 in the South Building. Attendees should enter the building at Wing 7 at the 14th Street entrance. Participation is also being made available via teleconference. The call-in information will be located at the bottom of the registration form.

[1] Under section 201(f) of the Federal Food, Drug, and Cosmetic Act (the FFDCA), food is defined as (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

[2] The Codex Alimentarius Commission was formed in 1963 by the Food and Agriculture Organization and the World Health Organization of the United Nations to develop food standards, guidelines and related texts such as codes of practice, and is recognized under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures as the international standards organization for food safety.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS—Continued

	Date	Address	Electronic Address	Other Information
Advance registration	December 2, 2009	We encourage you to use electronic registration if possible.[1]	*http://www.fsis.usda.gov/News/Meetings_&_Events*. Please complete the registration form including all required fields.	A request for an oral presentation should specify whether the presentation will be directed to FDA, FSIS, or both. Depending on the number of requests, it may be possible to allot two presentation times to persons who request an opportunity to direct a presentation to both FDA and FSIS. Registration information and information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov*, including any personal information provided.
Make a request for an oral presentation during the time allotted for public comment	November 23, 2009			
Provide a brief description of the oral presentation and any written material for the presentation	December 2, 2009	Juanita Yates (see **FOR FURTHER INFORMATION CONTACT**)		Written material associated with an oral presentation may be posted without change to *http://www.regulations.gov*, including any personal information provided.
Request a sign language interpreter or other special accommodation due to a disability	November 30, 2009	Sheila Johnson (see **FOR FURTHER INFORMATION CONTACT**)		
Submit comments	by March 3, 2010.Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane rm. 1061, Rockville, MD 20852	*http://www.regulations.gov*	All comments should be identified with the docket number found in brackets in the heading of this document. For additional information on submitting comments, see section VII of this document.	

[1] You may also register by mail, fax, e-mail, or phone by providing registration information (including name, title, firm name, address, telephone number, fax number, and e-mail address), requests to make an oral presentation, and written material for the presentation to Juanita Yates (see **FOR FURTHER INFORMATION CONTACT**).

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

IV. Background

A. Introduction

The public meeting is intended to address product tracing systems to facilitate traceback investigations and traceforward operations for food products. A traceback investigation is an investigation to determine and document the distribution and production chain, and the source(s), of contaminated (and potentially contaminated) food, often in the context of an outbreak of foodborne illness. A traceforward operation is an operation to determine the distribution of contaminated (and potentially contaminated) food. An outbreak of foodborne illness is the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

Food can become contaminated at many different steps in the farm-to-table continuum: On the farm; in packing, manufacturing/processing, or distribution facilities; during storage or transit; at retail establishments; in restaurants; and in the home. In recent years, FDA and FSIS have taken a number of actions to prevent both deliberate and unintentional contamination of food at each of these steps. FDA and FSIS have worked with other Federal, State, local, territory, tribal, and foreign counterpart food safety agencies, as well as with law enforcement agencies, intelligence-

gathering agencies, industry, and academia to significantly strengthen the Nation's food safety and food defense systems across the entire distribution chain. This cooperative work has resulted in a greater awareness of potential vulnerabilities, the creation of more effective prevention programs, new surveillance systems, and the ability to respond more quickly to outbreaks of foodborne illness. However, changes in consumer preferences, change in industry practices, and the rising volume of imports continue to pose significant challenges for FDA and FSIS (72 FR 8750, February 27, 2007; 73 FR 55115, September 24, 2008; 67 FR 62325, October 7, 2002; and Ref. 2). Recently, thousands of processed food products have been recalled due to contamination (and potential contamination) of ingredients (e.g., peanuts and peanut-derived products, pistachios, and dried milk) with a pathogenic microorganism (e.g., *Salmonella*) or chemical (e.g., melamine) (Refs. 3 through 6). In addition, contamination (and potential contamination) of ground beef with a pathogenic microorganism (e.g., *Escherichia coli* O157:H7) has led to recalls involving millions of pounds of ground beef (Ref. 7). These food contamination events, often involving foodborne illnesses, have emphasized the importance of efficient and effective product tracing systems, particularly the importance of linking shipments of contaminated (and potentially contaminated) food backward and forward through the supply chain through the efficient assembly and review of product tracing records.

In some cases, a firm that receives, manufactures, or distributes food, or a regulatory official detects contamination of a food in the market, without any known or suspected association between the food and reports of foodborne illness. When the contamination could cause foodborne illness, quick action is necessary to remove the food from the market. A traceforward operation to determine the distribution of all contaminated (and potentially contaminated) food may be initiated for any type of food in the market, e.g., a raw agricultural commodity, a food ingredient, or any single- or multi-ingredient processed food. In recent years, traceforward operations for food ingredients have highlighted the potentially large impact that contamination (or potential contamination) of a single food ingredient can have on thousands of food products containing that ingredient (Refs. 3 through 6).

In other cases, food that has become contaminated goes undetected until it is associated with an outbreak of foodborne illness. When an outbreak of foodborne illness occurs, quick action is critical to prevent additional illness. The Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services (HHS), and State, local, territory and/or tribal health departments conduct epidemiologic investigations to identify the possible food(s) involved in an outbreak. In general, when it is concluded that the contamination occurred at the point of sale, such as a restaurant (e.g., due to illness of a food worker or environmental contamination at the point of sale), FDA or FSIS does not get involved with the investigation. If it appears that the contamination did not occur at the point of sale, CDC and/or the State/local/territory/tribal entity notify FDA, FSIS, or both about the outbreak and the specific food that is potentially associated with the outbreak.

After CDC and/or the State/local/territory/tribal entity notify FDA or FSIS that a specific food is potentially associated with an outbreak of foodborne illness, the notified agency (or agencies) reviews and evaluates the available data and information. Based upon the agency's review and evaluation of epidemiologic data and/or laboratory results, the notified agency may initiate a traceback investigation to identify the source of the food and, potentially, of the contamination. As with a traceforward operation, a traceback investigation may be initiated for any type of food in the market, e.g., a raw agricultural commodity, a food ingredient, or any single- or multi-ingredient processed food. Working with industry and with other domestic (and, in some cases, foreign) government agencies, the notified agency inspects or investigates each point throughout the supply chain to determine where the contamination likely occurred. In the course of an investigation, the notified agency may examine the facility, ingredients, finished products, packaging, and food handling practices (such as how long food is held before shipping, whether the facility practices ''first in–first out'' when selling products, and whether finished products or ingredients are shared or exchanged with other facilities).

Timely and accurate information gained from records available during a traceback investigation or traceforward operation may:

- Help limit the public health impact of a foodborne illness outbreak, for example, by enabling a more rapid traceforward operation to remove the contaminated (or potentially contaminated) food from the market;
- Enable public health authorities and the food industry to provide targeted and accurate information about affected food to consumers, and, as a result, restore or enhance consumer confidence in food safety;
- Help limit the source of the problem to a particular food (e.g., brand), or to a particular region or locality (e.g., as a source of contaminated (or potentially contaminated) fresh produce) so that firms or regions that are not connected to the contaminated (or potentially contaminated) food are not adversely affected by an outbreak investigation or by a recall; and
- Help prevent future outbreaks by enabling the applicable Federal or State regulatory agency to more rapidly investigate firms where contamination may have occurred, so that conditions and practices that may have been associated with the contamination can be observed and the lessons learned can be used to prevent contamination in the future.

Current records (maintained by the various persons in the supply chain) that contain product tracing information include external records (such as bills of lading, airway bills, manifests, invoices, shipping records, and packing lists) that a firm establishes to accompany commercial transactions and internal records (such as batch production records, inventory records, and distribution records) that a firm establishes for its own use and may consider proprietary. Existing FDA requirements to establish and maintain information to facilitate product tracing require a firm to make certain information available to FDA, within 24 hours, when FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals (see FDA's regulations entitled ''Establishment, Maintenance, and Availability of Records'' (21 CFR part 1, subpart J)).[3] However, this information need not be kept as one record (see 21 CFR 1.330).

Similarly, FSIS requires certain classes of firms and corporations to maintain, retain, and make available to FSIS records that fully and correctly disclose all transactions involved in their businesses subject to the Federal Meat Inspection Act (21 U.S.C. 642), the

[3] For more information on the recordkeeping regulations in 21 CFR part 1, subpart J, see Refs. 8 and 9).

Poultry Products Inspection Act (21 U.S.C. 460(b)), and the Egg Products Inspection Act (21 U.S.C. 1040). Records kept by FSIS-regulated businesses that may contain product tracing information include, but are not limited to, bills of sale, invoices, bills of lading, and receiving and shipping papers (see 9 CFR 320.1, 381.175, and 590.200). Upon the presentation of credentials by a representative of the Secretary of Agriculture, these records must be made available for examination and copying (see 9 CFR 320.4, 381.178, and 590.220).

In practice, reviewing multiple records to find information relevant to a particular traceback investigation or traceforward operation takes time and decreases the efficiency of product tracing. Recent traceforward operations have demonstrated that it can take months for foods containing a contaminated (or potentially contaminated) ingredient to be removed from the market (Refs. 3 through 6). Enhancing recordkeeping systems to be able to more rapidly link a specific lot of an incoming ingredient to all released food containing that specific lot of ingredient could improve the efficiency of traceforward operations for food products containing a contaminated (or potentially contaminated) food ingredient.

Likewise, recent traceback investigations conducted by FDA demonstrate that FDA's ability to identify the source of an outbreak can range from days to months after CDC notifies FDA that a specific food has been implicated in an outbreak (Ref. 10). At the start of a traceback investigation, FDA reviews records at the point of sale, such as a grocery store, where the product was purchased. The review of records at point of sale usually leads to the review of records at a distribution center. Key challenges at the point of sale include identifying shipments of interest and narrowing the number of shipments of potentially contaminated food. Key challenges at the distribution center include difficulties in linking a shipment released by a distribution center to the point of sale and difficulties linking outgoing shipments of food products released from the distribution center with incoming shipments of food products received by the distribution center. These challenges in the review of records at point of sale and at distribution centers delay the traceback investigation and may result in a wider scope of product potentially implicated.

Together these traceback investigations and traceforward operations have demonstrated that FDA needs to be able to respond to the size and complexity of the food supply chain with a product tracing system that is more sophisticated, effective, and efficient in its capacity to link the contaminated food along the distribution chain and that reflects and responds to changing production and distribution patterns.

FSIS is also hindered by similar problems. FSIS relies heavily on records maintained by manufacturers, distributors, and retailers to aid in identifying and tracing back FSIS-regulated products associated with foodborne illness outbreaks, recalls, and other food safety incidents. Retail records are a critical component in traceback and traceforward activities. Quickly and effectively determining the source product in these situations is essential in identifying the product in commerce that presents a risk to the public and preventing additional illnesses.

Many investigations into human illness involve the consumption of raw beef products ground or chopped by FSIS-inspected establishments or retail facilities. FSIS investigators and public health officials frequently use records kept at all levels of the food distribution chain, including the retail level, to identify and traceback the product that is the source of the illness. In cases of *E. coli* O157:H7 complaints or illnesses, FSIS personnel often have to rely on raw beef grinding records kept by official meat establishments, retail facilities, and meat markets to gather the information needed to undertake traceback actions.

Recent illness outbreak investigations and other activities conducted by FSIS have demonstrated inadequate recordkeeping by some retail-level businesses and FSIS-inspected establishments that produce ground beef. The agency has found that the records kept by these establishments are often incomplete and have missing or inaccurate information. The lack of proper recordkeeping by these businesses has contributed to:

- Increasing the amount of time needed to identify products of interest,
- Inability to traceback product to the source material,
- Inability to identify all potentially adulterated products in distribution,
- Increasing the possibility that the wrong window of production is identified,
- Broader actions by the agency such as public health alerts and not directed recalls,
- Increased cost to the agency, and
- Increased risk to the consumer through the increased time delay, possibility of incorrect product identification, and limited specificity in public health messages.

Like FDA, FSIS needs to take steps to change this situation. In particular, FSIS needs to assess the need to provide notice, outreach, compliance guides, or other information to industry to promote awareness of, and compliance with, records and food safety requirements.

While there are many significant challenges with traceback/traceforward investigations, there are successes. In 2007, the Minnesota Department of Health (MDH) conducted a traceback/traceforward investigation that resulted in the recall of approximately 117,500 pounds of beef trim products used to make ground beef. MDH conducted an epidemiological investigation of a cluster of nine *E. coli* O157:H7 case-patients with an indistinguishable pulsed field gel electrophoresis (PFGE) pattern combination who had reported eating ground beef. A case-control study conducted by MDH found that consuming ground beef purchased at retail outlets located in eight different States was significantly associated with illness. Leftover product from the case-patients collected and tested by the Minnesota Department of Agriculture (MDA) were found presumptive positive for *E. coli* O157:H7. In this case, the traceback/traceforward investigation was facilitated by MDA investigators' use of purchase date and store location information from case-patients, along with complete and accurate grinding logs from the retail stores. This enabled MDA to definitively identify the production date of the implicated product and the single federal meat establishment from which the product came.

B. Statutory and Regulatory Framework for Product Tracing Systems in the United States

1. FDA

Several sections in the FFDCA (such as sections 301, 402, 403, 412, 414, 416, 417 and 704(a)) (21 U.S.C. 321, 342, 343, 350(a), 350(c), 350(e), 350(f), and 374(a)) and section 361 of the Public Health Service Act (42 U.S.C. 264) provide authority for, or are otherwise relevant to, product tracing systems. Using these authorities, FDA has established a number of regulations relevant to product tracing systems, such as those listed in table 2 of this document. Regulations established in 21 CFR part 1, subpart J apply to both human food and food for animals. The listed regulations established in 21 CFR parts 101, 106, 111, 113 and 114 apply to human food (21 CFR 500.23, however,

extends § 113's application to animal foods). The listed regulations established in 21 CFR part 501 apply to food for animals.

TABLE 2—REGULATIONS RELEVANT TO PRODUCT TRACING SYSTEMS

Regulation(s)	Subject	Brief Description
21 CFR part 1, subpart J	Establishment, Maintenance, and Availability of Records	Requires certain persons who manufacture, process, pack, transport, distribute, receive, hold, or import food to establish and maintain certain records identifying the immediate previous source of all food received, as well as the immediate subsequent recipient of all food released. The regulations describe the information that must be established and maintained, how long it must be maintained, and how quickly it must be available to FDA when FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. The regulations also describe persons (e.g., farms and restaurants) who are excluded from some or all of the requirements.
21 CFR 101.3 21 CFR 501.3	Identity labeling of food in packaged form	Requires the principal display panel of a food in package form to bear a statement of the identity of the commodity.
21 CFR 101.5 21 CFR 501.5	Food; name and place of business of manufacturer, packer, or distributor.	Requires the label of a food in packaged form to specify conspicuously the name and place of business of the manufacturer, packer, or distributor.
21 CFR 106.90	Infant Formula Quality Control Procedures	Requires product coding for all infant formulas.
21 CFR part 111	Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements	Requires, among other things, identification of each lot of received components in a manner that allows tracing the lot to the supplier and the date received; using this unique identifier when recording the disposition of the lot of received components; establishing a batch, lot or control number for each finished batch of dietary supplements; and being able to determine the complete manufacturing history and control of the packaged and labeled dietary supplement through distribution.
21 CFR 113.60(c); 21 CFR 114.80(b)	• Thermally Processed Low-Acid Foods Packaged In Hermetically Sealed Containers; • Acidified Foods	A product code must be established and included on the package of a food that is a thermally processed low-acid food packaged in a hermetically sealed container (§ 113.60(c)) or an acidified food (§ 114.80(b)).

Section 417 of the FFDCA establishes requirements for FDA to establish a Reportable Food Registry (RFR). A ''reportable food'' is an article of food (other than dietary supplements or infant formula) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. The purpose of the RFR is to provide a ''reliable mechanism to track patterns of adulteration in food [which] would support efforts by the Food and Drug Administration to target limited inspection resources to protect the public health'' (Public Law 110–085, section 1005(a)(4)). In accordance with section 417 of the FFDCA, FDA implemented on September 8, 2009, the RFR electronic portal by which instances of reportable food must be submitted to FDA by responsible parties and may be submitted by public health officials. Information as to the immediate prior source of the food and/or ingredients and the immediate subsequent recipient(s) of the food may be required to be submitted through the electronic portal. FDA has issued a guidance document (Ref. 11) containing questions and answers relating to the requirements under section 417 of the FFDCA.

2. FSIS

Like FDA, FSIS' statutes have sections that are relevant to product tracing systems for meat, poultry, and egg products subject to FSIS' jurisdiction. Sections 642 of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), 460(b) of the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and 1040 of the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) require certain classes of firms and corporations to maintain, retain, and make available full and correct business records or transactions in food. The regulations implementing those statutory sections, 9 CFR part 320, 9 CFR part 381, and 9 CFR 590.200, specify businesses and what types of basic records are required, such as bills of sale, bills of lading, receiving and shipping papers, receipts and inventories. Under the Federal Meat Inspection Act, FSIS also has the authority, under certain circumstances, to mandate specified recordkeeping by retail stores for certain violations and to withdraw or modify statutory exemptions for public health reasons (21 U.S.C. 623 and 454, 9 CFR parts 301 and 381).

Under FSIS' Hazard Analysis and Critical Control Points (HACCP) regulations (9 CFR part 417), a meat or poultry establishment is required to keep records related to its HAACP plan, including all records associated with its operation (i.e., monitoring, verification, and corrective action). The records of these activities are subject to FSIS review and are to be made available to FSIS personnel (9 CFR 417.5(e) and (f)). Especially relevant are (1) all records, results, and supporting documentation associated with prerequisite programs; (2) the results and records associated with testing conducted for the establishment's business customer; and (3) results and records associated with an establishment's quality control program.

All of the records generated under the agency's statutory authority facilitate FSIS surveillance and investigation activities, and the control and removal of adulterated, misbranded, or otherwise

illegal or unsafe products from commerce. Failure to keep such records negatively affects consumers' health and FSIS food safety and response activities (e.g., foodborne illness investigations, product traceback, product traceforward, and product recall).

C. Considerations for an Effective Product Tracing System

A ''whole chain'' product tracing system consists of information elements provided by persons in the supply chain to other persons in the supply chain or to regulatory officials (e.g., during a traceback investigation). Key information elements of a ''whole chain'' product tracing system may include:

- Who manufactured the product,
- Who is sending the product forward in the supply chain and who is receiving the product,
- Who is transporting product in the supply chain,
- The physical location at which food is received or released,
- An adequate description of the food that is received or released,
- The date and time food is received or released,
- A lot or code number (or other identifier of the food),
- The quantity of food and how it is packaged,
- The specific source of each ingredient used to make every lot of finished product,
- A shipment identifier (such as an invoice number, airway bill number, or bill of lading, and
- A means to link information about food that is received to food that is released both internally and externally throughout the distribution chain.

A particular information element of a whole chain product tracing system may be available:

- In records (including internal and external records) that persons in the supply chain establish and maintain,
- On a label of packaged food (or on the container or package itself),
- On an individual item of unpackaged food (such as loose produce), and/or
- On a shipping case containing food.

The information available in the form of records associated with a whole chain product tracing system enables an interested person to identify, and link, at any specific stage of the supply chain, who manufactured a food product, what specific ingredients are in the product, where the product came from, where the product was or is, where the product went, and who transported the product.

Most product tracing systems (including FDA's regulations in 21 CFR part 1, subpart J) are designed and implemented as ''one up/one down'' systems rather than as ''whole chain'' systems. In a ''one up/one down'' system, the focus is on the immediate previous source of food and the immediate subsequent recipient of food, as well as the immediate previous transporter and the immediate subsequent transporter.

The information available on the label or package[4] of food has often been invaluable in enabling FDA to quickly identify the source of a food implicated in foodborne illness during a traceback investigation (73 FR 55115 at 55118). Likewise, such information can help FDA or FSIS to quickly determine the distribution of all identified lots of contaminated (and potentially contaminated) food during a traceforward operation. The practical utility of information available on the label or package of a food during a traceback investigation may be limited in some circumstances, e.g., if a consumer who became ill after eating a food product no longer has the package of food. However, information about when the consumer purchased the product, coupled with information maintained in records by the person who sold the product to the consumer, may help to narrow the scope of a traceback investigation.

In section V.A.4 of this document, FDA is seeking comment on whether some information in product tracing systems should be sent further in the supply chain than ''one down.''

D. International Product Tracing Systems

In 2008, FDA described some aspects of international product tracing systems (73 FR 55115 at 55119). For example:

- In 2006, Codex established principles for tracing food through production and distribution processes. The Codex principles are intended to assist government authorities in utilizing product tracing as a tool within their food inspection and certification system.
- The European Union (EU) requires all food and feed to be traceable ''one step forward and one step back'' in EU member states.
- In 2007 the International Standards Organization (ISO) issued ISO 22005:2007, which provides general principles and basic requirements for designing and implementing a product tracing system along a food processor's supply chain.[5]
- The GS1 Global Traceability Standard is a business process standard describing the traceability process independently from the choice of enabling technologies. It defines minimum requirements for companies of all sizes across industry sectors and corresponding GS1 Standards used within information management tools.

E. 2008 Public Meetings on Product Tracing Systems for Fresh Produce

In 2008, FDA held two public meetings to stimulate and focus a discussion about mechanisms to enhance product tracing systems for fresh produce intended for human consumption (73 FR 55115). Fresh produce includes fresh produce that is intact and whole (such as whole tomatoes), cut during harvest (such as heads of lettuce), or ''fresh-cut'' (i.e., minimally processed by actions such as peeling, slicing, or trimming before being packaged for use by the consumer or retail establishment). Examples of fresh-cut produce are shredded lettuce, sliced tomatoes, salad mixes, and cut melons. As discussed in the notice announcing the meetings, traceback investigations for fresh produce have highlighted several particular challenges associated with tracing fresh produce back through the supply chain (73 FR 55115 at 55118). For example:

- Fresh produce is perishable and may no longer be available for testing by the time the outbreak is detected;
- Fresh produce is often sold loose, without any packaging that would provide information about its source;
- Containers in which the fresh produce was shipped, which may have provided information about its source, may also have been discarded by the consumer or end user long before a traceback investigation is initiated; and
- Common industry practices add a layer of complexity. Examples of such practices are:
  - Repacking fresh produce from multiple sources;
  - Commingling food from different sources, shipments, or lots;
  - Exchanging food with other local farms or businesses;
  - Re-using and sharing shipment containers from other farms/businesses;

[4] Note that the term ''package'' does not include shipping containers or wrappings used solely for the transportation of such commodities in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail distributors (see 21 CFR 1.20(a)).

[5] ISO 22005:2007. ''Traceability in the feed and food chain—General principles and basic requirements for system design and implementation.'' July 2007. Available for purchase at *http://webstore.ansi.org*.

○ Using different names for the same fresh produce as it travels throughout the supply chain;[6]

○ Substituting a different variety or size of fresh produce without documentation; and

○ Not assigning a lot or code number (or other identifier of the food) to the fresh produce that goes forward into the supply chain.

As also discussed in the notice announcing the 2008 public meetings, in 2006 there was a multi-state outbreak of illnesses associated with the consumption of fresh spinach contaminated with *E. coli* O157:H7 (73 FR 55115 at 55118). In this situation, the traceback investigation was facilitated because several consumers who became ill still had packaged fresh spinach in their refrigerators. This traceback investigation was greatly facilitated by the information on the label of the packaged food and on the package itself, including a product code. Investigators were able to identify the processor through information required to be on the label of the packaged spinach (21 CFR 101.5(a)) and through a product code the processor had voluntarily placed on the package. In the early stage of the investigation, the investigators identified several potentially implicated farms associated with the production lot of bagged spinach based on the processor's records. Narrowing to the implicated farms from the processor records was more time consuming.

In the notice announcing the meetings (73 FR 55115 at 55120), FDA asked questions about nine topic areas relating to tracing systems for fresh produce. FDA received several dozen comments, submitted either directly to Division of Dockets Management, submitted in writing to accompany oral testimony provided at the meeting, or presented orally and captured in the written transcript of the meeting. In addressing FDA's questions, several comments support the approach recommended by the Produce Traceability Initiative (Refs. 12 through 14) for case identification based on GS1 standards for the effective management and control of supply chains for fresh produce. Information applied to the shipping case would identify the ''brand owner'' of the fresh produce in the case as well as various attributes of that fresh produce (such as what the fresh produce is and a lot number). Comments addressing the issue of commingling generally express the view that commingling is an acceptable practice provided there are adequate records documenting the commingling to enable linking the incoming source and outgoing product.

Comments generally agree that information in a product tracing system should be human-readable and, where possible, in electronic form. However, some comments stress it is more important to have the information recorded in any form (including paper form) than to require product tracing records to be electronic. One comment notes that the common use of day labor, the pressure of productivity, and the challenges associated with handling perishable items make it difficult for persons who handle fresh produce to establish and maintain proper records. Some comments note that purchase records already maintained by retailers and restaurants (e.g., for accounting purposes) may be useful for product tracing.

Several comments mention the use of different product tracing systems by various persons in the supply chain, and the lack of interoperability of current systems, as significant barriers to whole-chain product tracing. Several comments describe products that offer solutions to some of the logistical challenges associated with tracing fresh produce. One comment notes that requiring a motor carrier to read a radio frequency identification (RFID) tag on each crate during the transportation process could be costly and burdensome to everyone in the supply chain. Comments generally agree that there would be significant startup costs associated with any system that uses a standard format, but that the impact on the industry would vary depending on an individual company's readiness.

Several comments both stress the importance of compliance with the existing requirements of the regulations in 21 CFR part 1, subpart J and assert that FDA should focus its efforts on enforcing these existing requirements for product tracing rather than on introducing new requirements. Some comments acknowledge that FDA's current legal authority to inspect records under 21 CFR part 1, subpart J is limited to situations for cause, i.e., when FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals (§ 1.361). Some of these comments express support for additional legal authority for FDA to inspect these records to evaluate compliance in addition to FDA's current legal authority to inspect these records for cause. Some comments point out that the recordkeeping requirements of the Perishable Agricultural Commodities Act (PACA) have significance with respect to product tracing, e.g., that persons (such as handlers of fresh produce) subject to PACA already capture information that could be used for tracing purposes.

F. FDA's Activities Since the 2008 Public Meetings on Product Tracing Systems for Fresh Produce

In the spring of 2009, FDA engaged in a pilot project, through the Institute for Food Technologists (IFT) to conduct a mock traceback scenario on tomatoes with representatives of the industry, academia, States, and two technology companies. FDA also awarded a 1-year contract to IFT to review industry practices for product tracing and identify best practices employed by many different sectors regulated by FDA. The IFT report is expected to be delivered by November 2009.

Over the course of the last year, FDA has met extensively with many industry representatives on their product tracing initiatives as well as solution providers to gain a better understanding of the practices and technology available to enhance product tracing for foods. In addition, FDA has conducted several outreach efforts to share some of the challenges in traceback and traceforward investigations in foodborne illness outbreaks.

In May 2009, FDA provided an update on its efforts related to produce tracing systems at a joint symposium (''Symposium on Methods and Systems for Tracking, Tracing, and Verifying Foods'') between the Food and Environment Research Agency of the EU and the Joint Institute for Food Safety and Applied Nutrition (JIFSAN, an academic partnership between FDA and the University of Maryland). FDA is monitoring the activities of the EU 6th Framework Research programs and various projects related to traceability. One such program is the EU TRACE program, which has developed a chain information management system (TraceCore XML). Another such program is the EU TRACEBACK program, which is currently developing a system based on micro-devices to implement food traceability in the food chain. This system will be pilot tested on two major product chains: Feed/dairy and tomatoes.

JIFSAN is collaborating with the Iowa State University's IOWA Grain Quality Initiative to incorporate a generic product traceability module into JIFSAN's Good Agricultural Practices train-the-trainer program.

[6] For example, a tomato may be referred to as a ''red, round tomato'' early in the supply chain, and be referred to as a ''cooker tomato'' at a later stage in the supply chain. This type of change in name reflects the degree of ripeness of the tomato, which varies over time.

G. 2009 Report of the Inspector General

In 2009, HHS' Office of Inspector General (OIG) issued a report entitled ''Traceability in the Food Supply Chain'' (Ref. 15). The purpose of the report was to (1) assess the traceability of selected food products and (2) determine the extent to which selected food facilities maintain information required by FDA in a food emergency. The report noted that not all facilities are required to maintain lot-specific information in their records, and those that are required to maintain lot-specific information are required to maintain it only if it exists. Thus, OIG was able to trace only 5 of the 40 products it investigated through each stage of the food supply chain.

For 31 of the other 35 products OIG investigated, OIG could identify the facilities that likely handled them (Ref. 15). Most facilities that handled these products did not maintain lot-specific information in their records and could only estimate a range of deliveries (from one or more facilities) that may have included the product OIG purchased. For the remaining four products, OIG could not even identify the facilities that likely handled them.

OIG identified several factors that prevented OIG from tracing the specific products through the food supply chain and observed that these factors would affect the speed with which FDA can trace specific food products through the food supply chain. The factors listed by OIG are:

- Manufacturers, processors, and packers, do not always maintain lot-specific information, as required;
- Other types of facilities do not maintain lot-specific information because it is not required;
- Retailers receive products not labeled with lot-specific information; and
- Products are mixed from a large number of farms.

V. Issues and Questions for Discussion for FDA

FDA welcomes public comments and/or data on the following issues related to product tracing systems.

A. Core Information Elements of a Product Tracing System

1. Lot Code or Number (or Other Identifier of the Food)

a. *Assigning a lot or code number (or other identifier of the food).* As discussed in section IV.E of this document, the traceback investigation for a 2006 multi-State outbreak of illnesses associated with the consumption of fresh spinach contaminated with *E. coli* O157:H7 was greatly facilitated by the information on the label of a package of implicated spinach and on the package itself, including a product code. As also discussed in section IV.G of this document, the HHS OIG has found that the lack of a lot or code number (or other identifier) (either because such a number or code was not assigned, or because a facility either did not assign, or keep a record of, such a number or code) made it difficult to trace food throughout the supply chain.

Question 1a. Should a lot or code number (or other identifier of the food) be assigned to food? If so, at what stage or stages in the supply chain should it be assigned or modified? For example, should a lot or code number (or other identifier of the food) be assigned for all finished food products, whether sold in packaged or unpackaged form? Should a lot or code number (or other identifier of the food) be assigned whenever food is manipulated (such as when fresh produce is commingled, packed, or repacked)?

Question 1b. What data or information would be useful to include in a lot or code number (or other identifier of the food)?

Question 1c. What (if any) procedures should be used to establish a lot or code number (or other identifier of the food)? Should any such procedures address the size of a lot or the time frame for production of a lot (e.g., 21 CFR 113.60(c) provides that codes may be changed on the basis of one of the following: Intervals of 4 to 5 hours; personnel shift changes; or batches, as long as the containers that constitute the batch do not extend over a period of more than one personnel shift)?

b. *Location of a lot code or number (or other identifier of the food).*

Question 1d. Should the location of a lot or code number (or other identifier of the food) depend on the type of food, other factors, or both?

Question 1e. Should a lot or code number (or other identifier of the food) be located:

- On the label (or container or package) of a packaged food?
- On the shipping container of packaged food, unpackaged food, or both?
- In internal records (such as receiving records, batch production records, inventory records, and distribution lists)?
- In external records accompanying commercial transactions (such as a bill of lading, airway bill, invoice, manifest, shipping record, or packing list)?

Question 1f. What ways might the lot or code number (or other identifier of the food) be linked to internal and external records associated with the food?

2. Information Elements Not Already Required in 21 CFR Part 1, Subpart J

Records accompanying commercial transactions or documenting delivery or receipt of a product in commerce (such as a bill of lading, airway bill, invoice, shipping/receiving record, and packing list) contain product tracing information. For example, such records identify who is sending a product forward in the supply chain, who is receiving the product, what the product is, and how much of the product there is.[7] In some cases, such records also identify the lot or code number (or other identifier of the food). Many of these records have their own identifier, e.g., an invoice number, airway bill number, or a bill of lading number. It may be efficient to associate product tracing information with a ''shipment identifier,'' such as an invoice number, airway bill number, bill of lading, or some other identifier established by the shipper. For example, a firm that is sending product forward in the supply chain may retain some information (such as a lot or code number or other identifier of the food) in an internal inventory record and other information (such as the immediate subsequent recipient of the product) in shipping and distribution records. Including the shipment identifier in all of these records may help to link the records, particularly when records are in electronic form and can be searched using electronic means.

Question 2a. Should a shipment identifier be considered an information element of an enhanced product tracing system? If so, are there any business practices (e.g. the way shipments are currently identified) that would be impacted?

Question 2b. Should any other information not already required by §§ 1.337 and 1.345 be considered an information element of an enhanced product tracing system?

3. Information Elements on the Package of a Packaged Food and/or on the Shipping Case

Question 3a. Should product tracing information not currently required to be on the package of a packaged food or on

[7] Note that § 1.352(a), (b), and (c) provide three options, each using slightly different terminology, for transporters to satisfy the recordkeeping requirements. For the purpose of the discussion here, FDA uses generic terms associated with the information element rather than the specific terms used in § 1.352(a), (b), and/or (c).

a shipping case be present on the package or shipping case?

Question 3b. If so, what additional product tracing information should be present on the package or shipping case?

Question 3c. If so, at what stage or stages in the supply chain should such information be included?

Question 3d. If so, should such information be present for all food, or only some food?

4. Information Elements Transmitted Beyond ''One Up/One Down''

Question 4a. Should some information about fresh produce (such as information identifying the name and physical location of any farm, packer or repacker that provided, processed, or packed fresh produce) be sent forward farther in the supply chain than ''one down''? If so, how far in the supply chain should such information go? For example, should such information be transmitted as far as the retail establishment that sells the fresh produce to consumers, or as far as the last person in the supply chain before the retail establishment?

Question 4b. Should some information about packaged food[8] (such as information identifying the manufacturer of a processed food) be sent forward farther in the supply chain than ''one down''? If so, how far in the supply chain should such information go? For example, should such information be transmitted as far as the retail establishment that sells the food to consumers, or as far as the last person in the supply chain before the retail establishment?

5. Standardized Information Elements

The lack of standardization in the information in current product tracing systems can delay traceback investigations and traceforward operations largely due to the need to interpret and clarify information elements between varying product tracing systems and the lack of systems to link information elements.

Question 5a. What (if any) information elements in an enhanced product tracing system should be standardized? Are there specific information elements (such as a shipment identifier and a lot or code number (or other identifier of the food)) that are particularly amenable to standardization? Would such standardization be specific to a specific industry sector or type of food (e.g., fresh produce, frozen seafood, milk, baked goods, breakfast cereal) or could it apply across industry sectors or types of food?

Question 5b. What standards already exist and how useful are they for product tracing?

Question 5c. If standards can and should be used for certain information elements in an enhanced product tracing system, should FDA develop the standards?

Question 5d. Would current or newly developed standards for the content and format of electronic systems have practical utility for persons who continue to use paper-based records? For example, could human-readable data that supports standardized electronic data be useful to persons who continue to use paper-based records?

B. Records

1. Record of the Lot or Control Number (or Other Identifier of the Food)

FDA's regulations in 21 CFR part 1, subpart J require persons who manufacture, process, or pack food to keep records on the lot or code number or other identifier of the food received from the nontransporter and transporter immediate previous sources of food, or released to the nontransporter and transporter immediate subsequent recipients of food, to the extent this information exists (§§ 1.337(a)(4) and 1.345(a)(4)). These regulations do not require persons who do not manufacture, process, or pack food to keep records on the lot or code number or other identifier of the food.

Question 6a. Would it be useful for persons, in addition to those who manufacture, process or pack food, to establish and maintain a record of a lot or code number (or other identifier of the food)? If so, for which persons (e.g., distributors, retailers) would it be useful?

Question 6b. If it would be useful for some persons, in addition to those who manufacture, process, or pack food, to establish and maintain a record of a lot or code number (or other identifier of the food), would it be equally useful irrespective of the type of food (e.g., packaged food or fresh produce)?

2. Records to Facilitate Linkage

FDA's regulations in 21 CFR part 1, subpart J also require records kept by nontransporters to identify the immediate subsequent nontransporter and transporter recipients of food to include information reasonably available to the nontransporter to identify the specific source of each ingredient used to make every lot of finished product (§ 1.345(b)). In essence, a record containing such information is a ''linking record,'' because it links a specific lot of released food to specific lots of ingredient. FDA's regulations in 21 CFR part 1, subpart J have no corresponding requirement (under § 1.337) for a ''linking record'' that would link a specific lot of an incoming ingredient to all released food containing that specific lot of ingredient.

Question 7a. Would it be useful for nontransporters who manufacture, process, or pack food to establish and retain any additional records to facilitate linkage? In particular, would it be useful for persons who manufacture, process, or pack food to establish and maintain a ''linking record'' that would link a specific lot of an incoming ingredient to all released food containing that specific lot of ingredient?

Question 7b. If so, should some or all of these records be created at the time of receipt or release of food or be existing records, or should some or all of these records be new records created upon the request of FDA (e.g., during an outbreak investigation or traceforward operation)?

Question 7c. If so, would it be useful for FDA to specify the format of the record? For example, should FDA provide a model form that could be used to provide the information in such a record? Or would it be more useful for FDA only to specify the information elements of such a record?

Question 7d. If so, should all such records be in electronic form?

3. Records That Are Both Electronic and Human-Readable

As noted (see section IV.E of this document), comments to the 2008 notice of meeting on product tracing for fresh produce recommend that information in a product tracing system should be human-readable. Human-readable information would enable all persons in the supply chain to have access to the information. These comments also recommend that information in a product tracing system should, where possible, be in electronic form. Electronic systems could make it faster and easier to accurately record information, such as a lot or code number (or other identifier of the food) and link incoming with outgoing product and thus speed the course of a traceback investigation or traceforward operation. For example, a person making a paper record of a human-readable code expressed in numbers or letters may mistakenly transpose or omit numbers or letters, thus creating erroneous entries in the records. In

[8] Note that packaged produce is within the scope of both Question 4a and Question 4b.

contrast, the potential for such mistakes would be greatly reduced if the code is recorded using an automatic system, such as a bar code or RFID.

However, some persons may not have access to electronic technologies, particularly if the technology (such as the use of bar codes or RFID) requires an initial investment. Some persons may be reluctant to select a particular electronic technology if there is no industry standard for which electronic technology to use.

Question 8. Should some or all product tracing records be established and maintained in electronic form? If so, should information established and maintained in electronic form also be human-readable?

4. Mechanisms to Make Product Tracing Information Available to FDA

Question 9a. What can be done to speed the process whereby persons who have product information relevant to a traceback investigation provide the information to FDA? For example, should some information be sent to FDA, rather than have FDA travel to a facility that has the information?

Question 9b. If information would be sent to FDA, how should it be transmitted? For example, could the information be transmitted by e-mail, fax, or courier service (e.g., by overnight delivery)? Or should there be an electronic portal (such as the portal FDA developed for the Reportable Food Registry)?

C. Role of Risk in Developing an Enhanced Product Tracing System

Question 10. Should any or all enhancements to current product tracing systems apply regardless of risk, or should such enhancements be based on risk? If based on risk, what criteria should be used to determine risk? If not based on risk, should such enhancements be developed or phased in based on risk?

D. Costs, Benefits, and Feasibility of Implementing an Enhanced Product Tracing System

Further enhancing the product tracing system for food could aid FDA in shortening the duration of outbreaks and limiting the number of people who become ill. It could also give FDA more information to use in preventing future outbreaks. However, net public health benefits from enhancements to current product tracing systems may vary by food category depending on the level of risk. The net public health benefits may also vary by the type and size of entity along the supply chain that would be covered by the enhanced product tracing systems. FDA recognizes that enhancing product tracing for food may not be just a matter of keeping more or different records or adding more information to product or packaging, but also a matter of changing business practices.

Question 11a. What are the costs, benefits and feasibility of implementing an enhanced product tracing system for each of the persons in the supply chain for various segments of the food industry?

Question 11b. To what extent would an enhanced product tracing system affect current business practices? What would be the cost of any such changes in current business practices for each link in the supply chain?

Question 11c. What determines the costs for food distributors and retailers to maintain records of lot code information for manufactured products, and farm-related information for fresh produce?

Question 11d. What determines the costs for small food retailers to maintain records consistent with the BT regulations, as well as lot code information for manufactured and processed food products, and farm-related information for fresh produce?

Question 11e. What determines the costs for food service establishments to maintain records consistent with the BT regulations, as well as lot code information for manufactured or processed food products and farm-related information for fresh produce?

Question 11f. What determines the size of a lot of manufactured or processed food products and how do lot sizes vary by food category and size of the manufacturer?

Question 11g. What determines the costs for maintaining ''linking'' records for manufacturers?

E. Outreach

Shortly after the establishment of the product tracing requirements in 21 CFR part 1, subpart J, FDA held a series of public meetings to provide information on the rule to the public and to provide the public an opportunity to ask questions of clarification (69 FR 71655, December 9, 2004). Regardless of such outreach, the HHS OIG report (Ref. 15) noted that manufacturers, processors, and packers do not always maintain lot-specific information, as required.

Question 12a. What, if any, additional outreach from FDA would better enable manufacturers, processors, and packers to comply with the requirements to maintain records of the lot or code number (or other identifier) to the extent this information exists?

Question 12b. What, if any, additional outreach from FDA would better enable all persons subject to 21 CFR part 1, subpart J to better comply with its requirements?

VI. Issues and Questions for Discussion for FSIS

To address the specific causes of foodborne illness outbreaks associated with FSIS-regulated products, FSIS needs to develop a strategy to investigate and document them, and take enforcement action against firms for violations of FSIS' laws and regulations that impact public health. FSIS must also be able to fully investigate these complaints and reports of foodborne illness. With regard to investigations associated with ground beef consumption, product lot coding and beef manufacturing plant information are required to successfully conduct product traceback. In many circumstances, however, investigators are only provided with purchase information (e.g., date and location of purchase, type of ground beef). Investigators must then rely heavily on grinding records kept in retail stores, meat markets, and other operations to gather the information needed to undertake traceback actions. Unfortunately, investigators frequently find these grinding records to be incomplete because of missing or inaccurate information, thereby preventing the traceback of potentially adulterated products, which could result in additional illnesses.

FSIS is seeking comment on the following:

A. Core Information Elements of a Product Tracing System

1. Lot Code or Number (or Other Identifier of the Food)

With respect to the traceback and traceforward of ground beef, how can FSIS ensure that it will be able to obtain the following types of information from operations that grind beef:

- Production codes
- Total pounds ground with the same final label
- All source materials (such as full names and product codes of all source products used to formulate each lot of store ground product; Federal or State establishment numbers; sell-by, use-by, or other production date codes; use of bench trim and its source) used in each lot
- Special instructions or disclaimer statements on source material
- Other products ground from the same source

2. Standardized Information Elements

- Should FSIS focus on standardizing product codes?
- Would current or newly developed standards for the content and format of electronic systems have practical utility for persons who continue to use paper-based records? For example, could human-readable data that supports standardized electronic data be useful to persons who continue to use paper-based records?

B. Role of Risk in Developing Regulations

- Should any or all enhancements to product tracing systems apply regardless of risk, or should such enhancements be based on risk?
  - If based on risk, what criteria should be used to determine risk?
  - If not based on risk, should enhancements to product tracing systems be developed or phased in based on risk?
- The need for adequate ground beef grinding records is based on risk. Should FSIS wait for other specific items to become public health issues or should FSIS use a broader approach and include all amenable product?
- Should FSIS be concerned about ready-to-eat product or focus on raw product?
- Should FSIS look at heat-treated, not fully cooked products?
  - Does formulation impact heat-treated, not fully cooked products to the extent that FSIS needs to traceback the source material or should FSIS focus more on the processing practices and labeling?

VII. Comments

Interested persons may submit to the Division of Dockets Management (see table 1 of this document) written or electronic comments for consideration at or after the meeting in addition to, or in place of, a request for an opportunity to make an oral presentation. 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 are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that all persons, including minorities, women, and persons with disabilities are aware of this document, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2009_Notices_Index/index.asp*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password-protect their accounts.

IX. References

FDA has placed the following references on display in FDA's Division of Dockets Management (see table 1 of this document). You may see them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.)

1. Codex Alimentarius Commission. 2006. Principles for Traceability / Product Tracing As a Tool Within A Food Inspection and Certification System. CAC/GL60–2006. Available at *http://www.codexalimentarius.net/download/standards/10603/CXG_060e.pdf*. Accessed and printed on July 21, 2009.

2. CDC. 2009. Multistate Outbreak of Salmonella Infections Associated with Peanut Butter and Peanut Butter-Containing Products—United States, 2008–2009. *Morbidity and Mortality Weekly Reports*, vol. 58, No. 4, pp. 85–90. Available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm58e0129a1.htm*. Accessed and printed on April 26, 2009.

3. FDA. 2009. Peanut Butter and other Peanut Containing Products Recall List. Information current as of 12 PM June 12, 2009. 3916 Entries in List. Available at *http://www.accessdata.fda.gov/scripts/peanutbutterrecall/index.cfm*.

4. FDA. 2009. Pistachios and other Pistachio Containing Products Recall List. Information current as of 12 noon June 23, 2009. 664 Entries in List. Available at *http://www.accessdata.fda.gov/scripts/pistachiorecall/index.cfm*.

5. FDA. 2009. Plainview Milk Cooperative Ingredient Recall Product List. Information current as of noon July 17, 2009. 272 Entries in List. Available at *http://www.accessdata.fda.gov/scripts/Milk/*.

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8. FDA. 2004. What You Need to Know About Establishment and Maintenance of Records. Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodDefenseandEmergencyResponse/ucm113822.htm*.

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10. FDA. 2008. Statement of David Acheson, M.D., F.R.C.P., Associate Commissioner for Foods, Food and Drug Administration, Before the Committee on Agriculture, Subcommittee on Horticulture and Organic Agriculture, United States House of Representatives, July 30, 2008. Available at *http://www.fda.gov/NewsEvents/Testimony/ucm096397.htm*.

11. FDA. 2009. Guidance for Industry: Questions and Answers Regarding the Reportable Food Registry as Established by the Food and Drug Administration Amendments Act of 2007. Available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodSafety/ucm180761.htm*.

12. Produce Marketing Association and Canadian Produce Marketing Association. 2006. Fresh Produce Traceability. A Guide To Implementation. Available at *http://www.pma.com/cig/tech/traceability.cfm*. Accessed and printed on June 18, 2008.

13. Produce Marketing Association, Canadian Produce Marketing Association, and United Fresh Produce Association. 2007. Joint Release. Available at *http://www.cpma.ca/pdf/IndustryTech/Traceability_Joint_Release_PMA_CPMA_UFPA_Oct2007.pdf*. Accessed and printed on July 22, 2008.

14. CPMA/PMA Traceability Task Force. Traceability Best Practices. Fresh Produce Industry (North America). Available at *http://www.cpma.ca/pdf/IndustryTech/TraceabilityBestPractices.pdf*. Accessed and printed on July 18, 2008.

15. Daniel R. Levinson, Inspector General, Department of Health and Human Services,

Office of Inspector General. 2009. Traceability in the Food Supply Chain. March 2009. OEI–02–06–00210. Available at *http://oig.hhs.gov/oei/reports/oei-02-06-00210.pdf*. Accessed and printed July 20, 2009.

Dated: October 29, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26479 Filed 11–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Disorders in the Developing World 1.

Date: November 18, 2009.

Time: 3 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Disorders in the Developing World 2.

Date: November 19, 2009.

Time: 6 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26424 Filed 11–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health of the Population Fellowships.

Date: November 18–19, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 3166 MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NCRR Electron Microscopy Resource Review.

Date: November 30–December 2, 2009.

Time: 5 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza-Albany City Center, 30 Lodge Street, Albany, NY 12207.

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26422 Filed 11–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Brain Bank Resource.

Date: December 2, 2009.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Rebecca C Steiner, PhD., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 27, 2009

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26421 Filed 11–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel D), Funding Opportunity Announcement (FOA) PAR07–231, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned SEP:

Time and Date: 12:30 p.m.–4:30 p.m., December 1, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, FOA PAR07–231, Panel D.''

Contact Person for More Information: Maurine Goodman, MA, MPH, Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone (404)639–4747.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–26389 Filed 11–2–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0519]

Public Workshop: International Conference on Harmonisation S2 Genetic Toxicology Issues; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''ICH S2 Genetic Toxicology Issues.'' The 1-day public workshop is intended to seek constructive input from experts in the field of genetic toxicology on proposed changes to the International Conference on Harmonisation (ICH) guidance ''S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use'' that was published in March 2008.

DATES: The public workshop will be held on January 25, 2010, from 8:30 a.m. to 5 p.m. Register by January 15, 2010, to make a presentation at the workshop. See section II in the **SUPPLEMENTARY INFORMATION** section for information on how to attend the workshop. We are opening a docket to receive your written or electronic comments. Written or electronic comments must be submitted to the docket by February 24, 2010, to receive consideration.

ADDRESSES: The public workshop will be held at the Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857. Submit written or electronic requests to make a presentation to Adele Seifried (see **FOR FURTHER INFORMATION CONTACT**). Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Adele Seifried, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6482, Silver Spring, MD 20993–0002, 301–796–0535, FAX: 301–796–9855, e-mail: *Adele.Seifried@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this workshop are to provide a scientific forum where experts in the field of genetic toxicology can provide their views on proposed changes to ICH S2(R1). These proposed changes are described in the following paragraphs.

A. The Genetox Battery and Followup Testing: Options 1 and 2

The ICH steering committee agreed that revision of ICH S2 was appropriate because the 2 guidances that comprise it, ICH S2A and ICH S2B, were finalized nearly 15 years ago and much has been learned in the interim. ICH S2(R1) is a draft version that discusses the components of a basic genetic toxicology battery as well as in vivo followup testing that should be conducted when in vitro tests are positive. ICH S2(R1) offers two test options: Option 1 is similar to the current ICH and CDER test battery with some modifications. Option 2 removes the in vitro mammalian cell test from the test battery and instead includes two in vivo endpoints that can be assessed in a single assay. The workshop will examine these options in addressing what constitutes an adequate genetic toxicology battery, including which tests are reasonable followups to a positive in vitro cytogenetic assay or mouse lymphoma assay. The workshop will also examine the following: (1) Whether an in vivo comet assay is a reasonable followup test to a positive in vitro cytogenetic or mouse lymphoma assay, and if not, what alternatives exist, and (2) whether the two-option system being proposed would provide comparable or superior patient protection to the current single-option test battery.

B. Top Concentration for Mammalian In Vitro Genotoxicity Assays

The current ICH safety guidances specify that drug substances should be tested up to a concentration of 10 millimolars (mM) in vitro if no toxicity is seen at lower concentrations. The draft ICH S2(R1) proposes to lower this top concentration for required testing to 1 mM. This workshop will examine the scientific basis for this proposal and its potential effect on patient safety.

II. Attendance and Registration to Speak

There is no fee to attend the workshop, and attendees who do not wish to make a formal presentation to the scientific panel do not need to register. Seating will be on a first-come,

first-served basis. Opportunities to address the panel during the meeting will occur during discussion of each topic, and speakers will be required to register ahead of time. If you would like to make a formal presentation during the open public sessions, you must register and provide an abstract of your presentation by 5 p.m. e.s.t. on January 15, 2010. To speak, submit your name, title, business affiliation (if applicable), address, telephone and fax numbers, and e-mail address to Adele Seifried (see **FOR FURTHER INFORMATION CONTACT**). FDA has included issues for comment in section I of the **SUPPLEMENTARY INFORMATION** section. You should also identify by letter each issue you wish to address in your presentation and the approximate time requested for your presentation.

FDA will do its best to accommodate those who wish to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their comments and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter. Persons registered to make a formal presentation should check in before the workshop. In addition, we strongly encourage written comments to the docket. Written or electronic comments will be accepted until February 24, 2010.

If you need special accommodations because of disability, contact Adele Seifried (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

III. Comments

Regardless of attendance at the public workshop, interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. To ensure consideration, submit comments by (see **DATES**). Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: October 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26397 Filed 11–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel G), Funding Opportunity Announcement (FOA) PAR07–231, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned SEP:

Time and Date: 12:30 p.m.–4:30 p.m., December 2, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, FOA PAR07–231, Panel G.''

Contact Person for More Information: Maurine Goodman, MA, MPH, Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone (404) 639–4747.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–26283 Filed 11–2–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of a Companion Diagnostic Kit To Detect Asparagine Synthetase Expression Levels as a Method To Screen for the Drug Efficacy in Treatments for Pancreatic Cancer, Ovarian Cancer, and Multiple Myeloma

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application No. 12/281,589 and PCT Application No. PCT/US07/05555 entitled ''Materials and Methods Directed to Asparagine Synthetase and Asparaginase Therapies'' (HHS Ref. No. E–132–2006/2), to the French-based ERYtech Pharma LLC which is located in Lyon, France (with an additional office in Philadelphia, Pennsylvania). The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be for to the use of the Licensed Patent Rights limited to a FDA-approved companion diagnostic test predictive of L-asparaginase therapeutic effect in the treatment of pancreatic cancer, ovarian cancer, and multiple myeloma as claimed in the Licensed Patent Rights.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 4, 2010 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Samuel E. Bish, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5282; Facsimile: (301) 402–0220; E-mail: *bishse@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The technology describes methods and therapies involving asparagine synthetase (ASNS) and L-asparaginase

(L-asp). Included are methods to decrease cell proliferation, most notably in order to treat various cancers, by administrating to a subject a combination of an ASNS antagonist and a formulation of L-asp. The main ASNS antagonist utilized in these methods are small interfering RNAs (siRNAs) that reduce ASNS expression. Also included are methods of screening for the efficacy of L-asp in a subject by detecting the expression of the ASNS gene in a sample. The technology also describes a kit that probes to detect ASNS gene expression in a sample to identify the efficacy of L-asp treatment. ASNS serves as a key biomarker for acute lymphoblastic leukemia (ALL) and other malignancies because these cancer cells express little or no ASNS compared to normal cells. As a result, the cancerous cells must acquire asparagine from the bloodstream to survive and proliferate to form tumors. Over several decades, patients with ALL and other leukemias have been treated with L-asparaginase (L-asp) to break down asparagine in the body and starve leukemia cells of asparagine. L-asp treatment is usually more effective when ASNS expression in the patient is limited.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 26, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–26309 Filed 11–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2009–OMM–0015]

MMS Information Collection Activity: 1010–0051, Oil and Gas Production Measurement, Extension of a Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0051).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart L, Oil and Gas Production Measurement.

DATES: Submit written comments by January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

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

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled ''Enter Keyword or ID,'' enter docket ID MMS–2009–OMM–0015 then click search. Under the tab ''View by Relevance'' you can submit public comments and view supporting and related materials available for this collection of information. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0051 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart L, Oil and Gas Production Measurement.

OMB Control Number: 1010–0051.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, *et seq.*) at section 1712(b)(2) prescribes that an operator will ''develop and comply with such minimum site security measures as the Secretary deems appropriate, to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft.'' Regulations at 30 CFR part 250, subpart L, implement these statutory requirements. We use the information to ensure that the volumes of hydrocarbons produced are measured accurately, and royalties are paid on the proper volumes. Specifically, MMS needs the information to:

- Determine if measurement equipment is properly installed, provides accurate measurement of production on which royalty is due, and is operating properly;
- Obtain rates of production data in allocating the volumes of production measured at royalty sales meters, which can be examined during field inspections;
- Ascertain if all removals of oil and condensate from the lease are reported;
- Determine the amount of oil that was shipped when measurements are taken by gauging the tanks rather than being measured by a meter;
- Ensure that the sales location is secure and production cannot be removed without the volumes being recorded; and
- Review proving reports to verify that data on run tickets are calculated and reported accurately.

The MMS will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, Data and information to be made available to the public or for limited inspection and 30 CFR part 252, OCS Oil and Gas Information Program. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Varies by section, but primarily monthly, or on occasion.

Description of Respondents: Respondents comprise Federal oil, gas and sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 8,533 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart L	Reporting or recordkeeping requirement	Hour burden non-hour cost burden
	Liquid Hydrocarbon Measurement	
1202(a)(1), (b)(1); 1203(b)(1); 1204(a)(1)	Submit application for liquid hydrocarbon or gas measurement procedures or changes; or for commingling of production or changes.	11 applications. $1,271 simple fee. $3,760 complex fee.
1202(a)(4)	Copy and send pipeline (retrograde) condensate volumes upon request	45 minutes.
1202(c)(1), (2); 1202(e)(4); 1202(h)(1), (2), (3), (4); 1202(i)(1)(iv), (2)(iii); 1202(j).	Record observed data, correction factors and net standard volume on royalty meter and tank run tickets. Record master meter calibration runs. Record mechanical-displacement prover, master meter, or tank prover proof runs. Record liquid hydrocarbon royalty meter malfunction and repair or adjustment on proving report; record unregistered production on run ticket. List Cpl and Ctl factors on run tickets	Respondents record these items as part of normal business records and practices to verify accuracy of production measured for sale purposes.
1202(c)(4)*	Copy and send all liquid hydrocarbon run tickets monthly	1 minute.
1202(d)(4); 1204(b)(1)	Request approval for proving on a schedule other than monthly; request approval for well testing on a schedule other than every 60 days.	1 hr for each.
1202(d)(5)*	Copy and submit liquid hydrocarbon royalty meter proving reports monthly and request waiver as needed.	2 minutes.
1202(f)(2)*	Copy and submit mechanical-displacement prover and tank prover calibration reports.	10 minutes.
1202(l)(2)*	Copy and submit royalty tank calibration charts before using for royalty measurement.	15 minutes.
1202(l)(3)*	Copy and submit inventory tank calibration charts upon request; retain charts for as long as tanks are in use.	15 minutes. 5 minutes.
	Gas Measurement	
1203(b)(6), (8), (9)*	Copy and submit gas quality and volume statements monthly or as requested (most will be routine; few will take longer).	2 minutes. 30 minutes.
1203(c)(4)*	Copy and submit gas meter calibration reports upon request; retain for 2 years	5 minutes. 1 minute.
1203(e)(1)*	Copy and submit gas processing plant records upon request	30 minutes.
1203(f)(5)	Copy and submit measuring records of gas lost or used on lease upon request	30 minutes.
	Surface Commingling	
1204(a)(2)	Provide state production volumetric and/or fractional analysis data upon request.	1.
1205(a)(2)	Post signs at royalty or inventory tank used in royalty determination process	1.
1205(a)(4)	Report security problems (telephone)	15 minutes.
	Miscellaneous and Recordkeeping	
1200 thru 1205	General departure and alternative compliance requests not specifically covered elsewhere in subpart L.	1.
1202(e)(6)	Retain master meter calibration reports for 2 years	1 minute.
1202(k)(5)	Retain liquid hydrocarbon allocation meter proving reports for 2 years	1 minute.
1203(f)	Document and retain measurement records on gas lost or used on lease for 2 years at field location and minimum 7 years at location of respondent's choice.	1 minute.
1204(b)(3)	Retain well test data for 2 years	2 minutes.
1205(b)(3), (4)	Retain seal number lists for 2 years	2 minutes.

* Respondents gather this information as part of their normal business practices. MMS only requires copies of readily available documents. There is no burden for testing, meter reading, *etc.*

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: The currently approved non-hour cost burden for this information collection is a total of $1,154,700. This cost burden is for filing fees associated with submitting requests for approval of simple applications (applications to temporarily reroute production (for a duration not to exceed 6 months); production tests prior to pipeline construction; departures related to

meter proving, well testing, or sampling frequency ($1,271 per application) or to submit requests for approval of complex applications (creation of new facility measurement points (FMPs); association of leases or units with existing FMPs; inclusion of production from additional structures; meter updates which add buyback gas meters or pigging meters; other applications which request deviations from the approved allocation procedures ($3,760 per application).

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: October 27, 2009.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E9–26366 Filed 11–2–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–10; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of modified decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to Doyon, Limited, notice of which was published in the **Federal Register** on July 30, 2009, 74 FR 38041, 38042, will be modified to include Secs. 5 and 6, T. 11 S., R. 17 E., Kateel River Meridian, Alaska. These sections were inadvertently omitted from the lands approved for conveyance in the July 30, 2009 decision. There is no change to the amount of acreage approved for conveyance in the decision of July 30, 2009, as these two sections were included in the acreage figures.

Notice of the modified decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal on the change made by the modified decision are:

1. Any party claiming a property interest which is adversely affected by the changes made by the modified decision shall have until December 3, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights. Except as modified, the decision of July 30, 2009, notice of which was given, is final.

ADDRESSES: A copy of the modified decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at: *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara J. Walker,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9–26388 Filed 11–2–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12354, AA–12356, AA–12362; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited for 42.65 acres located northwesterly of the Native village of Holy Cross, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 3, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30

days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at: *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9–26392 Filed 11–2–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14904–A; F–14904–A2; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Newtok Corporation, Inc. The lands are in the vicinity of Newtok, Alaska, and are located in:

Seward Meridian, Alaska

T. 9 N., R. 87 W.,
Secs. 3, 10, 15, 21, and 22;
Secs. 23, 27, 28, 33, and 34.
Containing approximately 4,063 acres.

T. 8 N., R. 88 W.,
Secs. 1, 2, and 3.
Containing approximately 1,571 acres

T. 10 N., R. 80 W.,
Secs. 7 to 10, inclusive;
Secs. 15 to 20, inclusive;
Secs. 29 to 32, inclusive.
Containing approximately 6,371 acres.

T. 10 N., R. 81 W.,
Secs. 1 to 5, inclusive;
Secs. 9 to 16, inclusive;
Secs. 21 to 28, inclusive;
Secs. 35 and 36.
Containing approximately 11,195 acres.
Total aggregate of Secs. 12(a) and 12(b) is 23,200 acres.

A portion of the subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Newtok Corporation, Inc. The remaining lands lie within the Clarence Rhode National Wildlife Range. The subsurface estate in the refuge lands will be reserved to the United States at the time of conveyance. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 3, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at: *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. E9–26390 Filed 11–2–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: Pursuant to 25 CFR 83.10(l)(2), notice is hereby given that the Department of the Interior (Department) has determined the Little Shell Tribe of Chippewa Indians of Montana, P.O. Box 1384, Great Falls, Montana 59403, is not entitled to be acknowledged as an Indian Tribe within the meaning of Federal law. This notice is based on a determination the petitioner does not satisfy all seven mandatory criteria set forth in 25 CFR 83.7, and thus does not meet the requirements for a government-to-government relationship with the United States.

DATES: This determination is final and will become effective 90 days from publication of this notice in the **Federal Register** on February 1, 2010, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

ADDRESSES: Requests for a copy of the summary evaluation under the criteria should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS: 34B–SIB, Washington, DC 20240, and the decision is available at *http://www.bia.gov/ofa_recent_cases.html.*

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Assistant Secretary—Indian Affairs (AS–IA) to the Acting Principal Deputy Assistant Secretary—Indian Affairs. This notice is based on a determination the Little Shell Tribe of Chippewa Indians (LS), based on the complete record of available evidence, does not meet all seven of the mandatory criteria for acknowledgment in 25 CFR 83.7. Specifically, the LS petitioner does not meet criteria 83.7(a), (b), and (c).

On July 21, 2000, the AS–IA published notice of a proposed finding (PF) to acknowledge the Little Shell petitioner in the **Federal Register**. 65 FR 45394 (July 21, 2000). The PF concluded that, in a departure from certain practices and precedent related to how to weigh the available evidence at the time, the petitioner met all seven mandatory criteria under the acknowledgment regulations. The notice and PF invited public comment on these proposed departures. The LS petitioner was also strongly encouraged to provide additional evidence during the comment period to demonstrate that it met all the mandatory criteria. The notice and PF stated that additional evidence from the LS could create a different record and a more complete factual basis for the FD, thus eliminating

or reducing the scope of the proposed departures from precedent.

Publishing notice of the PF in the **Federal Register** initiated a 180-day comment period during which time the petitioner, interested and informed parties, and the public could submit arguments and evidence to support or rebut the PF. The petitioner requested, and the Department provided, a series of extensions for good cause that eventually extended the deadline for the comment period to February 5, 2005. The time period for the petitioner to respond to the comments closed on April 13, 2005.

The petitioner requested and received six informal technical assistance (TA) meetings from the OFA during the comment period and received a copy of OFA's 2000 recommendation. It also received comments on the PF from two third parties, one known as the ''Lineal Mikisew-Asiniwiin Ojibwa Clan Council,'' in May 2004, and one from Terry Long Fox in September 2004. The OFA received the petitioner's response to these third-party comments on April 13, 2005. This FD is made following a review of the evidence in the record for the PF, comments on the PF, petitioner's response to the comments, and on evidence the Department researchers developed during their verification research.

The Department began consideration of the Little Shell petition for the FD on August 1, 2007. The AS–IA established July 27, 2009, as the due date for the issuance of the FD following two 180-day extensions for good cause. Subsequently, the Solicitor was granted first a 60-day, and then a 30-day extension, to complete her legal review.

The PF concluded that, in a departure from precedent and looking at the evidence as a whole, external observers had identified the petitioner as an American Indian entity on a substantially continuous basis since 1900 despite there being no specific evidence that external observers identified the petitioner's ancestors as an American Indian entity from 1900 to 1935. The Department concludes that, based on the current available evidence, a 35-year period of non-identification by external observers is too long to meet the criterion under the reasonable likelihood standard of proof and is inconsistent with the language of the regulations which require substantially continuous external identification since 1900. There was no evidence that the lack of identification between 1900 and 1935 was a fluctuation in activity. Applying the standards of the regulations, the evidence proved too limited even when taking into account 83.6(e) concerning historical circumstances and fluctuations in group activity.

The PF proposed to depart from precedent by allowing the petitioner to meet criterion 83.7(b) without requiring ''specific evidence showing the continuity of Tribal existence substantially without interruption.'' LS was strongly encouraged to provide additional evidence to meet this criterion in order to uphold the proposed finding. The regulatory standards of proof provide that a criterion ''is not met if the available evidence is too limited to establish it, even if there is no evidence contradicting facts asserted by the petitioner.'' The regulations provide that either the lack of evidence of social interaction or evidence of little or no contact would mean the petitioner has not met criterion 83.7(b) (59 FR 9280). LS did not provide sufficient evidence during the comment period to meet this criterion.

A conclusion that the limited interaction in a minority portion of the petitioner is sufficient for the petitioner as a whole would be inconsistent with the plain meaning of a ''predominant portion'' of a group having to be engaged in social interaction. Further, such an assumption does not work for purposes of defining the boundary of the petitioner's community, which is a significant part of the evaluation done by the Department researchers.

Criterion 83.7(b) requires a demonstration of continuous existence (meaning substantially without interruption) by a distinct community since historical times by a predominant portion of the petitioning group. When considered against the lack of additional evidence, the plain language, the intent, regulatory standards of proof, and precedent established in other findings both before and after the PF, the PF's proposed departures from precedent cannot be supported.

The acknowledgment regulations require for purposes of criterion 83.7(c) that a petitioner maintain political authority or influence over its members as an autonomous entity from historical times until the present. Political influence or authority means some mechanism that the group has used as a means of influencing or controlling the behavior of its members in significant respects, or making decisions for the group which substantially affect its members, or representing the group in dealing with outsiders in matters of consequence (83.1). A petitioner needs to demonstrate continuous existence of a political entity substantially without interruption.

The PF proposed to depart from precedent by accepting ''as a reasonable likelihood that patterns of social relationships and political influence'' among the petitioner's ancestors in their ''settlements in North Dakota and Canada during the mid-19th century persisted among their descendants who migrated to Montana and appeared on the Federal census records of Montana for 1910 and 1920.'' Regulatory standards of proof and Department precedent have not accepted ''patterns'' of political influence among a petitioner's ancestors in the middle 19th century would persist among their descendants 50 years later to meet this criterion without contemporary evidence of actual, significant political leadership among the group. To do so would be to base a conclusion of continuous political influence on supposition rather than evidence, and would be contrary to the standards of proof in the regulations. LS was again encouraged in the PF to provide additional evidence during the comment period to support meeting this criterion. The evidence provided by LS, however, was insufficient to satisfy the regulatory standard of proof.

The standards of proof in the regulations provide that the Department shall deny acknowledgment if there is insufficient evidence the petitioner meets one or more of the seven mandatory criteria 83.10(m). Accepting as a reasonable likelihood that patterns of political influence persisted among a group of descendants for over 50 years while simultaneously acknowledging the available evidence did not show such persistence is inconsistent with the regulatory standards of proof and cannot be justified.

The PF proposed to depart from acknowledgment precedent by accepting ''descent from the historical Indian Tribe by 62 percent of the petitioner's members as adequate'' for satisfying the criterion, although every previous petitioner had met the criterion with ''at least 80 percent'' of its members descended from a historical Indian Tribe.

The review of the petition is to be conducted by a team of professional researchers working in consultation with each other, using its expertise and knowledge of sources to evaluate the accuracy and reliability of the evidence submitted (70 FR 16515). The PF found a ''reasonable probability that a strong majority'' of a group's members have descent from the historical Tribe based on assumptions not in keeping with professional genealogical standards or the regulatory standards of proof.

The available evidence does not demonstrate the petitioner meets the requirements of previous unambiguous Federal acknowledgment in the regulations. The evidence concerning an appropriations act, treaty negotiations in 1851 and 1863, and actions in 1934 were not clearly premised on petitioner's ancestors being a Tribal political entity with a government-to-government relationship with the United States. Therefore, the petitioner was not evaluated under the provisions of section 83.8(d) that modify the mandatory criteria for Federal acknowledgment.

Criterion 83.7(a) requires external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. For the period from 1900 to 1935, the available evidence did not show external observers identified the petitioner's ancestors or an antecedent group as an Indian entity. Generally, the evidence demonstrates external observers only described some of the petitioner's ancestors as individuals of Indian or mixed Indian ancestry, living mostly among the general population. For these reasons, the petitioner does not meet criterion 83.7(a), which requires substantially continuous identification since 1900.

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The Department finds, as detailed in the Summary under the Criteria for this FD, that the evidence did not show the petitioner's ancestors evolved from a distinct community in the 19th century or that they migrated to Montana as a group by the early 20th century. For the period since the early 1900's, the evidence did not show the petitioner's ancestors constituted a distinct community with significant social relationships and social interactions.

The combined evidence does not demonstrate a predominant portion of the petitioner had demonstrated community since historical times. The evidence for this finding did not demonstrate the petitioner's ancestors formed a community which had evolved from a historical Indian Tribe or Tribes. The available evidence did show a large majority of the petitioner's current members have ancestry from Pembina Band of Chippewa Indians of North Dakota. Yet the available evidence showed that although a small number of the petitioner's earliest ancestors were part of the Band, a much larger percentage of the petitioner's ancestors composed some of the population of multiple settlements along the Red River in Canada which were not part of Indian Tribes, but populations of individuals descended from a variety of Indian-European marriages.

Before 1870, many of the petitioner's ancestors were part of the Métis populations along the Red River at the settlements of St. Francis Xavier, St. Boniface, and St. Norbert Parishes in Canada and at Pembina and St. Joseph in North Dakota. Many of the Métis in these settlements were not the petitioner's ancestors, or part of the group's claimed historical community. The evidence does not demonstrate the petitioner's ancestors were a distinct community or communities within these Métis populations.

About 89 percent of the petitioner's members descend either from individuals who received land scrip in the 1870's as ''mixed-blood'' relatives of the Pembina Band of Chippewa Indians, were identified as ''mixed-blood'' relatives of the band on various land scrip treaty schedules, or received treaty annuities as members of the band from 1865 to 1874. The scrip evidence does not demonstrate these ''mixed-blood'' relatives were politically part of the Pembina Band at that time. The available evidence does not show the ''mixed-blood'' Pembina documented on scrip records formed a distinct community at the time of the treaties, or at the time they received or applied for the scrip, either as a part of a treaty Tribe or as a separate community.

Some of the petitioner's ancestors who received annuities, however, were members of the Pembina Band of Chippewa at the time of their receipt. Yet the available evidence also shows these ancestors and their children dispersed widely soon after they received annuities. After the 1870's, some became part of the Turtle Mountain Band of Chippewa in North Dakota, where they maintained social and political affiliation rather than with any claimed historical group of the petitioner's ancestors that migrated to Montana. Others migrated gradually to settlements in Saskatchewan, Alberta, Manitoba, and northern Montana where they lost any possible social and political cohesion. A similar dispersal process took place among the petitioner's ancestors who received or were identified on treaty scrip, and there is no available evidence that showed these two groups of ancestors ever combined to form a distinct community during or after their migration.

In Montana, some of the petitioner's ancestors who came from the various settlements of Canada and North Dakota originally settled in two geographically separate areas, each of which covered a large expanse of territory—the Highline and the Lewistown area, and the other, the Front Range. The available evidence does not indicate the petitioner's ancestors who migrated to Montana and elsewhere from Dakota or Canada moved together as a group or in a pattern that maintained ties to places of origin. The evidence does not show that individuals from the petitioner's ancestral families at the Red River settlements in North Dakota or Manitoba, those identified as having Pembina Band ancestry through treaty scrip schedules or annuities, or those who appeared on Turtle Mountain Band censuses, migrated to Montana, or elsewhere, at the same time or to the same location. Rather the evidence demonstrates the migration was individualistic, gradual, and dispersed widely in a manner that did not maintain social cohesion. The available information does not demonstrate the petitioner's ancestors who settled in Montana had previous social ties with each other and evolved, as communities, from predecessor communities. In sum, the available evidence does not demonstrate that the petitioner's ancestors comprised a distinct community from the middle of the 19th century to the beginning of the 20th century.

The available evidence does not indicate that the petitioner's ancestors formed a distinct community or communities in the areas of Montana where they first settled. In reviewing the petitioner's residential analyses based on homestead and Federal census data, the Department found evidence of residential proximity of the petitioner's ancestors only for those in Lewistown from 1900 through the 1920's. In reviewing the petitioner's marriage data and analysis, the Department found a number of errors, the most fundamental being the petitioner did not establish a baseline community for the group. Neither has the petitioner delineated a social group for subsequent periods.

For the period of 1900–1930, the petitioner also submitted limited interview data on social relationships and social interactions. This information was mostly limited to social interactions between family members within specific geographic areas. There were no interviews in which an individual mentioned a distinct community comprised of the ancestors of Little Shell members. The Department did not find evidence of community in witnessing at baptisms data since it only described witnessing events between family members. The

petitioner's data and analyses do not provide sufficient evidence of community for the period from 1900–1930.

From the 1930's through the 1950's, the evidence for the PF showed some of the petitioner's ancestors and current members in Montana moved from rural areas into segregated Indian-Métis neighborhoods on the edges of towns. There they intermarried with Indian and Métis residents, participated in a culture distinct from non-Indians, and endured negative social distinctions and discrimination from non-Indians in the area. However, this evidence did not demonstrate the extent to which its population was distinct from other Indians and Métis residents in these neighborhoods. Nor did the petitioner show how its members were socially tied to each other across regions.

In response to the PF, the petitioner submitted new interview information as well as Federal and school census data identifying a greater number of its members residing in Montana during this time, which it claimed showed its population clustered residentially in ''enclaves'' on the edges of towns. However, the Department did not find evidence of residential clustering. Rather, the petitioner's ancestors and current members lived interspersed with other individuals who were neither Indian nor Métis. In addition, the Department found the petitioner's ancestors dispersed widely throughout other locations outside of the segregated neighborhoods. None of the data provided evidence of a distinct community comprised of the petitioner's ancestors and or current members. For the period from 1930–1950 the petitioner has not provided sufficient evidence demonstrating a distinct community.

From 1950–1992, a large number of the petitioner's members began moving to urban centers, such as Great Falls and Helena, as well to cities outside of Montana. The PF noted the petitioner had not demonstrated the extent to which its members in Great Falls comprised a community or were socially connected to members living elsewhere in Montana or out of State.

In comments on the PF, the petitioner did not submit new evidence for this specific period indicating how group members were socially connected within Great Falls, across regions, and with members residing out of the State of Montana. Neither did the petitioner indicate the extent to which members living outside of the State maintained community interactions among themselves. In the PF, the Department noted that strong patterns of discrimination declined in the 1950's through the present. However, in comments on the PF, the petitioner again claimed strong patterns of discrimination against group members persisted into this period. In examining the petitioner's combined interview material for the period from 1950–1992, the Department did not find evidence of discrimination against Little Shell group members. Rather, the evidence indicated negative social distinctions against members from non-Indians for being Indian as well as from reservation Indians for not being Indian enough, but not against them as Little Shell. The petitioner has not provided sufficient evidence of community for this period.

For the period from 1993 through 2007, the petitioner's ancestors continued to live primarily in Great Falls as well as in locations throughout Montana and out of State. The PF requested further information demonstrating how the petitioner's members comprised a community within and across Montana and with members out of State. In response, the petitioner did not present any new information on social interactions indicating it comprised a distinct community during this period. The new data on Joe Dussome Day indicated that the numbers of Little Shell attendees were low in comparison to the overall size of the petitioner's group.

In an attempt to show social interactions for modern community, the petitioner also submitted a number of analyses and models. These models did not provide evidence for distinct community for the following reasons. First, they were primarily based on statistical correlations between individuals without demonstrating actual community events and interactions. Second, they did not provide the social and economic contexts for interactions and how they pertained to Little Shell events, issues, or activities. Third, without a clear description of the group's community over time it is not possible to calculate percentages of various social activities such as in-group marriage. Fourth, in each of its analyses the petitioner aggregated like units of analyses without proving connections. The petitioner has not provided sufficient evidence of community for this period.

Overall, the available evidence shows Little Shell is an organization of individuals of shared ancestry from the Pembina Band of Chippewa. They share some cultural traditions and historical experiences as Métis. While the membership includes large extended families, the evidence does not show these are or were in the past linked to each other by kinship or other social ties into one or several communities. The evidence also does not indicate how the current organization evolved from a historical community or communities. The large extended families in the 20th century are not and have not been connected by regular social interactions and obligations, community events, internal disputes, or by common issues that unite them as a group.

Many Little Shell ancestors, and some older current members, shared the experience of homesteading in Montana, and, subsequently, living in segregated neighborhoods on the edges of towns. In the past, many experienced negative social distinctions from non-Indians, as well as from reservation Indians as not being Indian enough. However, these common experiences do not demonstrate there was social interaction and social relationships that bound them together into a community. Therefore, for the above reasons, the petitioner does not meet criterion 83.7(b) for any period.

Criterion 83.7(c) requires the petitioner has maintained political influence and authority over its members as an autonomous entity from historical times until the present. The Department concludes the available evidence is insufficient to support the conclusion that a significant portion of the petitioner has demonstrated political influence over its members since historical times under this criterion. Specifically from 1850 to 1900 the evidence did not reveal political continuity from a historical Indian Tribe. Most of the petitioner's ancestors were some of the population of various Métis settlements along the Red River in Manitoba and North Dakota early in this period. The available evidence showed these Métis settlements had political leaders and systems separate from the historical Pembina Band of Chippewa Indians that inhabited the area. While some of the petitioner's ancestors provided limited forms of leadership within some of these settlements, these ancestors did not amalgamate and evolve as a political group into the petitioner in Montana or elsewhere.

Many of the petitioner's ancestors who resided in these Métis settlements before 1880 later dispersed in a gradual, individualistic migration process that brought them to new settlements throughout the Northern Plains by the early 20th century. The available evidence did not demonstrate the petitioner's ancestors maintained any significant form of group leadership, formal or informal, as part of these new settlements. Thus, the available evidence does not demonstrate the

petitioner met the requirements of criterion 83.7(c) before 1900.

From 1900 through 1930, the petitioner claimed group members were under the authority of both Turtle Mountain leadership as well as local leaders located in both the Front Range and Highline regions of Montana. The petitioner's claimed political ties to Turtle Mountain were based on the receipt of allotments by some of the group's ancestors. Information on local leadership in Montana consisted of a limited number of descriptions of a few local Métis leaders located in Highline and Front Range communities.

In comments on the PF, the petitioner submitted additional information on allotments for 233 individuals it claimed were part of its ancestral population during this period. However, the Department did not consider this submission to supply adequate evidence of political influence for the following reasons. First, only a small number of the claimed allotment recipients have descendants in the modern membership. Second, the number of allotment recipients was only a very small percent of the population of the claimed size of the Little Shell group at the time. Third, a large number of allotment recipients were living outside of Montana at the time of receipt indicating they were not part of a group of the petitioner's ancestors in Montana.

In comments on the PF, the petitioner submitted additional information on alleged local leaders it claimed served as ''labor brokers'' from the 1900's through the 1950's. Based on its analysis, the Department did not find evidence the petitioner's ancestors functioned as ''labor brokers'' for its members. While a few local people of Métis ancestry living in the Front Range and Highline did obtain work contracts, interviews indicated that these individuals did not specifically hire other Little Shell group members.

While the petitioner claimed Joe Dussome was the leader of its first formal political organization in 1927, the evidence did not show that this organization encompassed the petitioner's ancestors across regions. In its comments on the PF, the petitioner claimed that Dussome had interregional support based on the fact that six of the 51 attendees at the organization's 1927 meeting were from the Front Range. In analyzing the petitioner's data, the Department found that none of the six individuals or their spouses was living in the Front Range at the time of the meeting. Most were part of one large family, the Doney family from the Highline, or intermarried with them.

During the middle 1930's, a second organization claiming to represent the Landless Chippewa Cree Indians of Montana developed in competition with the Dussome organization. This group was lead by Raymond Gray whose supporters came mostly from the Front Range. Without a clear description of the Little Shell community at this time as well as in earlier periods, it was not clear the extent to which these organizations represented two political factions within the same group or were political organizations representing two different populations and, or, communities.

From the period of the middle 1950's through the publication of the PF in 2000, the petitioner provided evidence of a unified political organization that extended to a substantial portion of its membership. However, without a description of the group's community, it was not possible to determine whether the group's political organization represented the group as a whole. The petitioner did provide further updates on conflicts surrounding the group's elections and political leadership. While the evidence showed some conflict among opposing political leaders, it did not show active participation or widespread knowledge of political activities among a significant percentage of the membership. Thus, the petitioner does not meet criterion 83.7(c) since 1950. Based on the foregoing reasons, the petitioner does not meet criterion 83.7(c) for any period.

Criterion 83.7(d) requires a copy of the group's present governing document including its membership criteria. The PF found that the petitioner satisfied the requirements of criterion 83.7(d) by submitting a copy of its 1977 constitution and a 1987 resolution that clarified the membership criteria in Article V of the constitution. The petitioner did not submit any new evidence for the FD concerning the governing document or the group's membership requirements. This FD confirms that the LS petitioner has satisfied the requirements of criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's membership consist of individuals who descend from a historical Indian Tribe or from historical Indian Tribes which combined and functioned as a single autonomous political entity. The PF proposed to depart from acknowledgment precedent and find that descent by 62 percent of the group was sufficient to meet this criterion. The Department did not apply the PF's lower standard to any subsequent finding. Further, for this criterion, additional evidence submitted during the comment period has eliminated any need to rely upon the departure from precedent stated in the Little Shell PF.

The Department's analyses for the FD are based on its determination that there are 4,332 members in the group. The LS petitioner submitted a certified membership list on July 18, 2006, with the names and birthdates for 4,336 individuals. After eliminating some duplicate entries, the Department determined that list represents 4,332 members. With the exception of about 1,100 cases where the only address was a post office box number rather than a residential address, the list includes all of the elements required by the regulations.

The LS petitioner submitted its genealogical data in an electronic format that linked the parent-child connections between the generations from the present back to the group's claimed ancestors. This new evidence included many new names and family connections that were not in the record for the PF. The petitioner also submitted a genealogical report and considerable new evidence that the group used to document their claims, including Lake Superior Chippewa and Pembina and Red Lake Bands treaty schedules and the Pembina annuity lists (1864–1865, 1868–1874). The Department investigated each of these claims and verified that 99 of the 123 claimed ancestors were descendants of the historical Pembina Band. In some of the remaining cases, the evidence showed that the petitioner's claimed ancestor, who was not a Pembina Band descendant, had the same name as the individual identified in the historical records as ''Pembina mixed-blood.'' Therefore, Pembina Band descent was wrongly attributed to the petitioner's ancestor of the same name. In some other cases, reliable evidence identified the claimed ancestors as Cree, Sarsee, Saulteaux, or Assiniboine Indians, but the Department did not find other contemporary evidence that also identified the individuals as Pembina Band descendants. The Department's analyses finds that about 89 percent of the LS petitioner's members have at least one ancestor who was identified in the historical records as a descendant of the Pembina Band of Chippewa Indians.

Ten percent of the members have not demonstrated descent from a Pembina Band descendant. About 6 percent descend from an Indian on one of the censuses of the Chippewa-Cree of Rocky Boy's Reservation, about 3 percent descend from other Tribes in Canada, Montana, or elsewhere, and less than 1 percent descends from a member of the

Turtle Mountain Band of Chippewa Indians. Less than 1 percent of the LS members did not have ancestry charts or were not in the group's genealogical database and the Department could not determine their ancestry.

The more complete record of the petitioner's ancestors and the additional evidence in the record for the FD demonstrates that about 89 percent of LS petitioner's members (3,865 of 4,332) descend from at least one ancestor who was a descendant of the historical Pembina Band. This FD finds that the petitioner has satisfied the requirements of criterion 83.7(e).

Criterion 83.7(f) requires that the membership of the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian Tribe. The Department's research for the FD finds that less than 1 percent of the petitioner's members (19 of 4,332) are enrolled in Federally acknowledged Tribes. This FD confirms the findings in the PF that the LS petitioner is principally composed of persons who are not members of any acknowledged Indian Tribe and therefore meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that neither the petitioner nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. A review of the available documentation showed no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian Tribe. Therefore, the petitioner meets the requirements of criterion 83.7(g).

A report summarizing the evidence, reasoning, and analyses that are the bases for the FD will be provided to the petitioner and interested parties, and is available to other parties upon written request and will be posted on the Bureau of Indian Affairs Web site. After the publication of notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of the FD in the **Federal Register**. The FD will become effective as provided in the regulations 90 days from the **Federal Register** publication unless a request for reconsideration is received within that time.

The regulations state that when the Department declines to acknowledge a petitioner it shall inform the petitioner of ''other means through which the petitioning group may achieve the status of an acknowledged Indian Tribe or through which many of its members may become eligible for services and benefits'' as Indians (§ 83.10(n)). Congress has plenary power over Indian affairs and, considering two historical factors, could recognize this petitioner as an Indian Tribe. First, the Department initiated action under the Indian Reorganization Act of 1934 that affected the ancestors of a significant majority of the petitioner's members. And, second, Congress passed the Act of December 31, 1982 (96 Stat. 2022) conditionally allocating certain trust funds to ''the Little Shell Tribe of Chippewa Indians of Montana'' petitioner.

In the 1930's, the Department considered using appropriations available under the Indian Reorganization Act of 1934 to buy land for, and then to reorganize as a Tribe, Indians in Montana of one-half degree or more Indian blood. The Department prepared the Roe Cloud Roll of these Indians, many of whom are among the Little Shell petitioner's ancestors. Seventy-four percent of the Little Shell petitioner's current members descend from an individual on the roll. Lands purchased by the Department at that time, however, were added to the Rocky Boy's Indian Reservation.

In the 1982 Act, which provided for the distribution of the funds awarded by the Indian Claims Commission to the Pembina Chippewa Indians in the *Turtle Mountain* decision of 1978, Congress allocated a portion of those funds to the ''Little Shell Band.'' Eighty percent of the allocated funds were distributed per capita to the Pembina Chippewa descendants who were members of the Little Shell Tribe of Chippewa Indians of Montana and otherwise met the general qualifications to participate in the distribution as descendants. The other 20 percent of the award allocated to the Little Shell Tribe was to be held in trust and invested until the Secretary acted on its petition for recognition. If the Secretary failed to recognize the Band, the 20 percent was to be distributed per capita when the action on the petition was final. *See* Sections 2 and 6.

Those funds remain in trust and now total more than $3 million. Congress could direct that they be used to purchase land for the group, as contemplated in the 1930's, should Congress choose to recognize the Little Shell petitioner. The funds set aside in 1982 may be considered for the use of the current petitioner because calculations at the time of the proposed finding on the Little Shell petitioner indicated that 51 percent of the petitioner's 1987 membership was on the Department's 1994 judgment roll prepared under the 1982 statute, and because there is continuity between the petitioner's 1987 membership and the current membership.

Dated: October 27, 2009.

George T. Skibine,

Acting Principal Deputy, Assistant Secretary—Indian Affairs.

[FR Doc. E9–26373 Filed 11–2–09; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from August 24, to August 28, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: October 20, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

MARYLAND

Baltimore County

Baltimore County Jail, 222 Courthouse Court, Towson, 09000644, LISTED, 8/26/09

Kent County

Still Pond Historic District, Still Pond Rd., Old Still Pond Rd., Main St., Medders Rd., Maple Ave., Trustee St., Still Pond, 09000645, LISTED, 8/26/09

MASSACHUSETTS

Plymouth County

Tarklin School, 245 Summer St., Duxbury, 09000647, LISTED, 8/26/09

MINNESOTA

McLeod County

Komensky School, 19981 Major Ave., Hutchinson vicinity, 09000622, LISTED, 8/20/09

Ramsey County

O'Donnell Shoe Company Building, 509 Sibley St., St. Paul, 09000623, LISTED, 8/20/09

MISSOURI

Cape Girardeau County

Old Appleton Bridge, Main St. over Apple Creek, Old Appleton, 09000648, LISTED, 8/25/09

NEBRASKA

Douglas County

Northern Natural Gas Building, 2223 Dodge St., Omaha, 09000649, LISTED, 8/26/09

Merrick County

Nelson Farm, 1139 M Rd., Central City vicinity, 09000650, LISTED, 8/26/09

NEW JERSEY

Burlington County

Zurburgg Mansion, 531 Delaware Ave., Delanco, 09000651, LISTED, 8/28/09

Hunterdon County

Lebanon Historic District, Main St., Cherry St., Brunswick Ave., Maple St., High St., Lebanon Borough, 09000652, LISTED, 8/26/09

NEW YORK

Chenango County

Emmanuel Episcopal Church Complex, 37 W. Main St., Norwich, 09000654, LISTED, 8/26/09

Monroe County

Linden-South Historic District, 25–272 Linden St., both sides; 809–835 South Ave., odd numbers only, Rochester, 09000655, LISTED, 8/26/09

Suffolk County

Foster-Meeker House, 101 Mill Rd., Westhampton Beach, 09000656, LISTED, 8/26/09

Tompkins County

Rogues Harbor Inn, 2079 E. Shore Dr., Lansing, 09000657, LISTED, 8/26/09

NORTH CAROLINA

Greene County

Snow Hill Historic District (Boundary Increase), W. Harper St. between W. 6th St. and W. 4th St., Snow Hill, 09000658, LISTED, 8/27/09

Nash County

Rocky Mount Central City Historic District (Boundary Increase and Decrease), Portions of 26 blocks on Main, Washington, Church, Battle, Hammond, Hill, Howard, Ivy, Gay, Goldleaf, and Thomas Sts., Rocky Mount, 09000659, LISTED, 8/27/09

Person County

Roxboro Cotton Mill, 115 Lake Dr., Roxboro, 09000660, LISTED, 8/27/09

Wake County

Carolina Coach Garage and Shop, 510 E. Davie St., Raleigh, 09000661, LISTED, 8/27/09

Wayne County

Yelverton, Dred and Ellen, House, 1979 NC 222 E., Fremont vicinity, 09000662, LISTED, 8/27/09

TENNESSEE

Greene County

Maden Hall Farm, 3225 Kingsport Highway, Greeneville vicinity, 09000667, LISTED, 8/27/09

VIRGINIA

Culpeper County

South East Street Historic District, S.E., E. Asher, E. Chandler, and Page Sts., and Culpeper National Cemetery, Culpeper, 09000663, LISTED, 8/27/09

Loudoun County

Rock Hill Farm, 20775 Airmont Rd., Bluemont vicinity, 09000664, LISTED, 8/27/09

Petersburg Independent City

Atlantic Coast Line Railroad Commercial and Industrial Historic District, 200–300 W. Washington, 4–42 S. Market, 100–100 Perry, 200–300 block W. Wythe, 200 block Brown Sts., Petersburg, 09000665, LISTED, 8/27/09

Roanoke County

Anderson-Doosing Farm, 7474 VA 785, Catawba vicinity, 09000666, LISTED, 8/27/09

[FR Doc. E9–26377 Filed 11–2–09; 8:45 am]

BILLING CODE 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 17, 2009. 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 18, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

Hubbard, L. Ron, House, 5501 N. 44th St., Phoenix, 09000953

NEW YORK

Westchester County

Soundview Manor, 283 Soundview Ave., White Plains, 09000957

TENNESSEE

Hamilton County

Engel Stadium, O'Neal St. and E. 3rd St., Chattanooga, 09000954

First Presbyterian Church, 554 McCallie Ave., Chattanooga, 09000955

Knox County

Daylight Building, (Knoxville and Knox County MPS) 501–517 Union Ave., Knoxville, 09000956

Request for REMOVAL has been made for the following resource:

TENNESSEE

Williamson County

Thompson Store, Duplex Rd. and Lewisbery Pike, Duplex, 88000359

[FR Doc. E9–26378 Filed 11–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO–3200000 L13100000.PP0000 L.X.EM OSHL000.241A]

Notice of Potential for Oil Shale Development: Call for Nominations—Oil Shale Research, Development and Demonstration Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) solicits the nomination of parcels to be leased for Research, Development and Demonstration (R, D and D) of oil shale recovery technologies in the States of Colorado, Utah, and Wyoming.

DATES: Nominations for oil shale R, D and D leases can be made from November 3, 2009 through January 4, 2010.

ADDRESSES: Please send nominations to the BLM State Director for the State in which the parcel you are nominating is located: Dave Hunsaker, Acting State

Director, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215–7076; Selma Sierra, State Director, BLM, Utah State Office, 400 West 200 South, Suite 500, Salt Lake City, Utah, 84145–0155; or Don Simpson, State Director, BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003.

FOR FURTHER INFORMATION CONTACT: Charlie Beecham, BLM, Colorado State Office, (303) 239–3773; Roger Bankert, BLM, Utah State Office, (801) 539–4037; or Robert Janssen, BLM, Wyoming State Office, (307) 775–6206.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of the Secretary of the Interior (Secretary) in section 21 of the Mineral Leasing Act to lease deposits of oil shale, on June 9, 2005, the BLM published in the **Federal Register** a notice entitled ''Potential for Oil Shale Development; Call for Nominations—Oil Shale Research, Development, and Demonstration (R, D and D) Program'' (70 FR 33753). While the BLM was processing the nominations, Congress enacted the Energy Policy Act of 2005 (EPAct), which included section 369 (codified at 42 U.S.C. 15927 and amendments to 30 U.S.C. 241). Section 369 addresses oil shale development and directs the Secretary to make public lands available for conducting oil shale research and development activities. 42 U.S.C. 15927(c). After processing the nominations received in response to the 2005 notice, the BLM issued six R, D and D leases, which became effective in 2007.

On January 15, 2009, the BLM published in the **Federal Register** (74 FR 2611) a notice for a call for nominations for a second round of R, D and D leasing. On February 27, 2009, the BLM published in the **Federal Register** a notice entitled ''Potential for Oil Shale Development; Withdrawal of the Call for Nominations—Oil Shale Research, Development, and Demonstration (R, D and D) Program and Request for Public Comment'' (74 FR 8983). In withdrawing the January 15, 2009, solicitation of parcels for R, D and D leases, the **Federal Register** notice stated, ''The new administration intends to review and reconsider certain aspects of the current solicitation, including lease acreage and the rules that would govern conversion of an R, D and D lease to a commercial lease, particularly those related to royalty rates.'' This notice also requested comments on the terms and conditions of any future R, D and D leases the BLM may issue.

The BLM received 51,685 comments from entities or individuals that may be grouped in five principal categories: Energy industry, academia, environmental groups, Federal/State/local government agencies, and citizens/citizen groups. The energy industry's comments generally suggested that (1) the acreage size for the second round of R, D and D should be large enough to allow expansion into potential commercial operations and (2) the royalty is too high to encourage investment. The academic commenters suggested that additional R, D and D is needed, particularly to test a low temperature process that would not impact water supplies. In general the environmental groups suggested that no additional leases be offered until the results of the current experiments are known and the BLM has completed a full, programmatic Environmental Impact Statement on the current oil shale R, D and D leases. One environmental entity suggested a 10-year R, D and D lease term, a 12.5 percent royalty rate, and in the event of a second round of R, D and D leasing, that acreage size should be limited to 160 acres, with no preference right lease acreage. Another environmental commenter recommended that the Department of the Interior engage in a mid-term assessment of the five R, D and D leases in Colorado, and that any future R, D and D lease offering should be conservative in size, scope, and lease terms. Commenters from the Federal/State/local government agencies generally stated that because the BLM has implemented a number of the provisions in the EPAct to promote oil shale development, the BLM should not make more land available for leasing through a second round of R, D and D. The citizen commenters were divided in their opinions. Some supported oil shale development primarily because they view oil shale development as an important component in the country's efforts to become energy independent. Others opposed oil shale development chiefly because of their concerns about potential adverse environmental impacts. One commenter from this category suggested that the current Federal royalty regime be abolished and replaced with an annual fee based on the value of the oil shale product.

By this notice, the BLM is soliciting the nomination of parcels, not to exceed 160 acres, for the conduct of oil shale R, D and D under a 10-year lease agreement. Applicants may also identify up to 480 additional, contiguous acres that the applicant requests the BLM to reserve for a preference lease area to be included in a commercial lease. Thus, any resulting commercial lease will be for a tract of a total of no more than 640 acres. The lease size available for commercial development is being reduced from the 5,120 acres in the first round of leasing because the substantial reserves represented by 640 acres are more than adequate for a major oil shale production operation.

The intent of this second round of R, D and D leases is to focus on the technology needed to develop the resources into marketable liquid fuels. Knowing the costs and benefits associated with the new technologies will inform the Secretary's future decisions about whether and when to move forward with commercial scale development and allow the Secretary to assess its impact on the environment, including an assessment of those impacts in light of climate change.

The lease form for this round of R, D and D leases has been revised from the one published in the **Federal Register** on June 9, 2005 (70 FR 33755). The revised R, D and D lease form is available at: *http://www.blm.gov/wo/st/en/prog/energy/oilshale_2.html.*

The R, D and D nominations will be reviewed by an Interdisciplinary Review Team. For this Team, the BLM will request the participation of a representative from each of the States of Colorado, Utah, and Wyoming, as appropriate, and the Departments of Defense and Energy. The criteria for awarding an R, D and D lease will be the: (1) Potential for a proposal to advance knowledge of effective technology; (2) Economic viability of the applicant; and 3) Means of managing the environmental effects of oil shale technology. The BLM will conduct an analysis under the National Environmental Policy Act (NEPA) of the proposals prior to awarding any R, D and D lease. Each applicant will be responsible for the costs associated with the NEPA analysis of the R, D and D lease application. The time required for analysis and documentation under NEPA may differ depending on whether the application is for a tract that has previously been the subject of NEPA analysis for oil shale operations, the method of shale oil extraction, and whether the application involves mining or in-place shale oil recovery. Accordingly, some R, D and D leases may be awarded prior to others. If the BLM receives two or more applications to lease the same lands and determines that more than one meets the requirements for R, D and D leases, the BLM will issue the lease to the qualified applicant with the superior proposal, as determined by the BLM, having

considered the recommendation of the Interdisciplinary Review Team.

Lease nominations must, at a minimum, contain the following information:

(1) Name, address, and telephone number of the applicant, and the representative of the applicant, who will be responsible for conducting the operational activities;

(2) Statement of qualifications to hold a mineral lease under the Mineral Leasing Act of 1920. Qualification requirements can be found in 43 CFR subpart 3902;

(3) Description of the lands, not to exceed 160 acres, together with any rights-of-way required to support the development of the oil shale R, D and D lease;

(4) A description of any additional lands you request be reserved for a preference right lease, adjacent to your R, D and D lease area and not exceeding 480 acres;

(5) A narrative description of the proposed methodology for recovering oil from oil shale, including a description of all equipment and facilities needed to support the proposed technology;

(6) A narrative description of the results of laboratory and/or field tests of the proposed technology;

(7) A schedule of operations for the life of the R, D and D project and proposed plan for processing, marketing, and delivering the shale oil to the market;

(8) A map of existing land use authorizations on the nominated acreage;

(9) Estimated shale oil and/or oil shale resources within the acreage of the nominated R, D and D parcel and the preference right area;

(10) The method of shale oil storage and the method of spent oil shale disposal;

(11) A description of any interim environmental mitigation and reclamation;

(12) The method of final reclamation and abandonment and associated projected costs of final reclamation;

(13) Proof of investment capacity to fund the proposed project;

(14) A description of the commitments of partners, if any;

(15) A statement from a surety qualified to furnish bonds to the United States Government of the bond amount for which the applicant qualifies under the surety's underwriting criteria;

(16) A non-refundable application fee of $6,500;

(17) Information that demonstrates the potential to:

(a) Minimize water usage;

(b) Protect surface and subsurface waters;

(c) Minimize life cycle greenhouse gas emissions and air pollution, including fugitive dust emissions;

(d) Capture and use natural gas onsite;

(e) Employ carbon capture and sequestration technology;

(f) Employ renewable energy and energy efficient technologies;

(g) Avoid and minimize impact on wildlife and habitat; and

(h) Minimize surface disturbance for roads and infrastructure/facilities.

Applications submitted for lands within any multi-mineral leasing area must demonstrate the potential capability to extract both shale oil and nahcolite or demonstrate a potential capability to extract one mineral while preserving the other for future recovery.

Applicants should prominently note and segregate any information submitted with their application that contains proprietary information, if the disclosure of this information to the public would cause commercial or financial injury to the applicant's competitive position. The BLM will protect the confidentiality of such information to the extent allowed by law. Any Freedom of Information Act requests for such information will be handled in accordance with the regulations at 43 CFR 2.23.

The lease terms and conditions for this round contain substantial diligence requirements to ensure operational effectiveness and accountability as well as to bring the new technology to the market effectively and efficiently. Specific timeframes are included within which to conduct specified/approved activities such as submitting the Plan of Development, obtaining state permits, developing infrastructure, and submitting required quarterly reports. As long as the lessee is not selling oil shale products or producing commercial quantities from the leasehold, no royalty will be collected during the lease term.

The BLM may issue a commercial lease, if at all, only after: (1) The lessee demonstrates that the applicant's technology tested in the original lease of up to 160 acres has the ability to produce shale oil in commercial quantities; (2) The BLM complies with NEPA and concludes through its evaluation under NEPA that commercial scale operations of the applicant's technology at that site do not pose environmental or social risks unacceptable to the BLM; (3) The lessee secures adequate bonding to cover all costs associated with reclamation and abandonment of the expanded lease area; (4) The lessee pays a bonus based on the fair market value of the lease to be determined by the BLM; and (5) The lessee, in conjunction with BLM, consults with State and local governments and affected tribes on a strategy to mitigate socioeconomic impacts, including, but not limited to, the infrastructure to accommodate the required workforce.

If the BLM issues a commercial lease, the lessee would have the exclusive right to acquire, along with the R, D and D lease area, lease rights to any or all portions of the preference lease area up to a total of 640 contiguous acres, upon compliance with the terms and conditions specified in the R, D and D lease agreement. Any commercial lease shall be subject to payment of rents and royalties at rates established in compliance with statutes and regulations in effect at the time of conversion.

The BLM will accept only one application per entity. A lessee may propose an amended plan of development if its research indicates that a different technology would more effectively achieve production in commercial quantities.

The non-refundable application processing fee has increased from $2,000 to $6,500 per application to cover the anticipated cost of processing these applications.

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. E9–26440 Filed 11–2–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. V. AT&T Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America et al.* v. *AT&T et al.,* Civil Action No. 09–1932 (HHK). On October 13, 2009, the United States filed a Complaint alleging that the proposed acquisition by AT&T of the mobile wireless telecommunications business assets of Centennial Communications Corp. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the divestiture of mobile wireless telecommunications

services businesses for certain areas in the states of Louisiana and Mississippi.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at: *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Nancy Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Suite 7000, Washington, DC 20530, (telephone: 202–514–5621).

Patricia A. Brink,

Deputy Director of Operations.

In the United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 7000, Washington, DC 20530; and State of Louisiana, Office of the Attorney General 1885 North Third Street Baton Rouge, Louisiana 70802; Plaintiffs, v. AT&T Inc., One AT&T Plaza, 208 South Akard Street, Dallas, Texas 75202; and Centennial Communications Corp., 3349 Route 138, Wall, New Jersey 07719; Defendants.

Civil No. 1:09–cv–01932–JDB
Filed: October 13, 2009

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Louisiana, by its Attorney General James D. ''Buddy'' Caldwell, bring this civil action to enjoin the merger of two telecommunications services providers, AT&T Inc. (''AT&T'') and Centennial Communications Corp. (''Centennial''), and to obtain equitable and other relief as appropriate. Plaintiffs allege as follows:

I. Nature of the Action

1. AT&T entered into an agreement to acquire Centennial, dated November 7, 2008, under which the two companies would combine their telecommunications services businesses (''Transaction Agreement''). Plaintiffs seek to enjoin this transaction because it will substantially lessen competition in mobile wireless telecommunications services in the following eight geographic markets: the Lafayette LA MSA (CMA 174); Alexandria LA MSA (CMA 205); LA RSA 3 (CMA 456); LA RSA 5 (CMA 458); LA RSA 6 (CMA 459); LA RSA 7 (CMA 460); MS RSA 8 (CMA 500); and MS RSA 9 (CMA 501).

2. AT&T provides mobile wireless telecommunications services in 50 states and serves in excess of 79.6 million subscribers. Centennial provides mobile wireless telecommunications services in six states, Puerto Rico, and the United States Virgin Islands, and serves approximately 1.1 million wireless customers. AT&T and Centennial are two of only a few providers of mobile wireless telecommunications services in the eight geographic markets in Louisiana and Mississippi identified above. Unless this acquisition is enjoined, consumers of mobile wireless telecommunications services residing in these areas likely will face increased prices, diminished quality or quantity of services, and less investment in network improvements for mobile wireless telecommunications services. Accordingly, AT&T's acquisition of Centennial would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Jurisdiction and Venue

3. This Complaint is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. Plaintiff Louisiana, by and through its Attorney General, brings this action in its respective sovereign capacity and as parens patriae on behalf of the citizens, general welfare, and economy of Louisiana under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

4. AT&T and Centennial are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25 and 26, and 28 U.S.C. 1331 and 1337.

5. The defendants have consented to personal jurisdiction and venue in this judicial district.

III. The Defendants and the Transaction

6. AT&T, with headquarters in Dallas, Texas, is a corporation organized and existing under the laws of the State of Delaware. AT&T is one of the world's largest providers of communications services. AT&T is the second largest mobile wireless telecommunications services provider in the United States as measured by subscribers, provides mobile wireless telecommunications services in 50 states, and serves in excess of 79 million wireless subscribers. In 2008, AT&T earned mobile wireless telecommunications services revenues in excess of $44 billion, and its total revenues were in excess of $124 billion.

7. Centennial, with headquarters in Wall, New Jersey, is a corporation organized and existing under the laws of the State of Delaware. Centennial is the eighth-largest mobile wireless telecommunications services provider in the United States as measured by subscribers, and provides mobile wireless telecommunications services in six states, Puerto Rico, and the United States Virgin Islands. In Puerto Rico, Centennial is also a competitive local exchange carrier, providing voice, data and connectivity solutions to residential, telecommunications carrier, and enterprise customers. For the fiscal year ending May 31, 2009, Centennial had approximately 1.1 million wireless subscribers and approximately 694,900 access line equivalents in Puerto Rico, and earned approximately $1 billion in revenues.

8. Pursuant to the Transaction Agreement, AT&T will acquire Centennial for approximately $944 million. If this transaction is consummated, AT&T and Centennial combined would have approximately 80 million wireless subscribers in the United States, with approximately $45 billion in mobile wireless telecommunications services revenues.

IV. Trade and Commerce

A. Nature of Trade and Commerce

9. Mobile wireless telecommunications services allow customers to make and receive telephone calls and obtain data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly valued by customers, as demonstrated by the more than 270 million people in the United States who own mobile wireless telephones. In 2008, revenues from the sale of mobile wireless telecommunications services in the United States were over $148 billion. To provide service, mobile wireless telecommunications services providers must deploy extensive networks of switches, radio transmitters, and receivers and interconnect their networks with the networks of wireline carriers and other mobile wireless telecommunications services providers.

10. In the early to mid-1980s, the FCC issued two cellular licenses in the 800 MHz band for each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Market Areas'' or ''CMAs''), totaling 734 CMAs covering the entire United States. The first mobile wireless voice systems using this cellular spectrum were based on analog technology, now referred to as first-generation or ''1G'' technology.

11. In 1995, the FCC licensed additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1,900 MHz band and are divided into six blocks which are divided among Major Trading Areas (''MTAs'') and Basic Trading Areas (''BTAs''). MTAs and BTAs do not generally correspond to MSAs and RSAs.

12. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing network capacity, shrinking the size of handsets, and extending handset battery life. Although there are a number of providers holding spectrum licenses in each

area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum generally have found it less attractive to build out in rural areas.

13. Today, more than 95 percent of the total U.S. population lives in counties where three or more mobile wireless telecommunications services operators offer service. Nearly all mobile wireless voice services have migrated from analog to digital-based second-generation or ''2G'' technologies, using GSM (global standard for mobility) or CDMA (code division multiple access). More advanced technologies (''2.5G'' and ''3G'') have also been widely deployed for mobile wireless data services. Wireless carriers are in the process of evaluating, testing, and deploying even more advanced wireless data technologies, such as WiMAX and Long Term Evolution, which will offer higher data transmission rates.

B. Relevant Product Market

14. Mobile wireless telecommunications services is a relevant product market. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Because fixed wireless services are not mobile, they are not regarded by consumers of mobile wireless telecommunications services to be a reasonable substitute for those services. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable. Mobile wireless telecommunications services accordingly is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Relevant Geographic Markets

15. The United States comprises numerous local geographic markets for mobile wireless telecommunications services. A large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they live, work, and travel on a regular basis. The geographic areas in which the FCC has licensed mobile wireless telecommunications services providers often represent the core of the business and social spheres within which a group of customers has the same competitive choices for mobile wireless telephone services. The number of and identity of mobile wireless telecommunications services providers varies among geographic areas, as does the quality of services and breadth of geographic coverage offered by providers. Some mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, varying their prices by geographic area.

16. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. 18, where the transaction would substantially lessen competition for mobile wireless telecommunications services are effectively represented by the following FCC spectrum licensing areas: Lafayette LA MSA (CMA 174); Alexandria LA MSA (CMA 205); LA RSA 3 (CMA 456); LA RSA 5 (CMA 458); LA RSA 6 (CMA 459); LA RSA 7 (CMA 460); MS RSA 8 (CMA 500); and MS RSA 9 (CMA 501). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers who do not offer services in these geographic areas to make a small but significant price increase in the relevant geographic markets unprofitable.

D. Anticompetitive Effects

1. Mobile Wireless Telecommunications Services

17. In seven of the eight cellular license areas described above, AT&T and Centennial are significant providers of mobile wireless telecommunications services (based on subscribers), and together their combined share in each area ranges from 51% to 89%. The eighth area, MS RSA 9, is rural. In MS RSA 9, AT&T and Centennial hold a large portion of the cellular licenses covering the CMA and have fairly extensive networks. Providers have found that cellular spectrum, given its characteristics, is more efficient in serving rural areas. Consequently, the holders of PCS licenses in MS RSA 9 have not fully constructed their networks throughout the CMA, opting instead to serve only a few areas where the population density is higher or there are major highways. The PCS spectrum holders are weak competitors and will remain so in the portions of MS RSA 9 where the merging parties will hold all the cellular spectrum post-merger. Thus, in each of the eight relevant geographic markets, AT&T and Centennial are the other's closest competitor for a significant set of customers.

18. The relevant geographic markets for mobile wireless services are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, concentration in these geographic areas today ranges from over 2,900 to more than 6,576, which is well above the 1,800 threshold at which plaintiffs consider a market to be highly concentrated. After AT&T's proposed acquisition of Centennial is consummated, the HHIs in the relevant geographic areas will range from over 4,500 to more than 8,100, with increases in the HHI as a result of the merger ranging from over 200 to over 3,350, significantly beyond the thresholds at which plaintiffs consider a transaction likely to cause competitive harm.

19. Competition between AT&T and Centennial in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services than otherwise would have existed in these geographic markets. In these areas, consumers consider AT&T and Centennial to be particularly attractive competitors because other providers' networks often lack coverage or provide lower-quality service. If the proposed acquisition is consummated, competition between AT&T and Centennial in mobile wireless telecommunications services will be eliminated in these markets and the relevant markets for mobile wireless telecommunications services will become substantially more concentrated. As a result, the loss of competition between AT&T and Centennial increases the merged firm's incentive and ability in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

2. Entry

20. Entry by a new mobile wireless services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring spectrum licenses and the build out of a network. Therefore, any entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from AT&T's proposed acquisition of Centennial, if it were consummated. Although the FCC recently auctioned more spectrum that can be used for mobile wireless telecommunications services, it is unlikely that networks will be constructed using this spectrum to support entry in the relevant geographic markets in the next two to three years due to the largely rural nature of the areas and build out costs.

V. Violation Alleged

21. The effect of AT&T's proposed acquisition of Centennial, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the relevant geographic markets for mobile wireless telecommunications services in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

22. Unless restrained, the transaction will likely have the following effects in mobile wireless telecommunications services in the relevant geographic markets, among others:

a. Actual and potential competition between AT&T and Centennial will be eliminated;

b. Competition in general will be lessened substantially;

c. Prices are likely to increase;

d. The quality and quantity of services are likely to decrease; and

e. Incentives to improve wireless networks will be reduced.

VI. Requested Relief

The plaintiffs request:

23. That AT&T's proposed acquisition of Centennial be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

24. That defendants be permanently enjoined from and restrained from carrying out the Agreement and Plan of Merger dated November 7, 2008, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the telecommunications businesses of

Centennial under common ownership or control;

25. That plaintiffs be awarded their costs of this action; and

26. That plaintiffs have such other relief as the Court may deem just and proper.

Dated: October 13, 2009.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

_____\s_____

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FOR PLAINTIFF STATE OF LOUISIANA

STATE OF LOUISIANA

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Appendix A —Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). (Note: Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1,800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

In the United States District Court for the District of Columbia

United States of America, and State of Louisiana, Plaintiffs, v. *AT&T Inc., and Centennial Communications Corp., Defendants. Filed: 10/13/09 No. 09 1932*

[Proposed] Final Judgment

Whereas, plaintiffs, United States of America and State of Louisiana, filed their Complaint on October 13, 2009, plaintiffs and defendants, AT&T Inc. (''AT&T'') and Centennial Communications Corp. (''Centennial''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiffs that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''AT&T'' means AT&T Inc., a Delaware corporation, with headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Centennial'' means Centennial Communications Corp., a Delaware corporation, with its headquarters in Wall, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''CMA'' means cellular market area which is used by the Federal Communications Commission (''FCC'') to define cellular license areas and which consists of Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs'').

E. ''Divestiture Assets'' means each mobile wireless telecommunications services business to be divested under this Final Judgment, including all types of assets, tangible and intangible, used by Centennial in the operation of its mobile wireless telecommunications services businesses in each of the following CMA license areas:

1. Lafayette LA MSA (CMA 174);
2. Alexandria LA MSA (CMA 205);
3. LA RSA 3 (CMA 456);
4. LA RSA 5 (CMA 458);
5. LA RSA 6 (CMA 459);
6. LA RSA 7 (CMA 460);
7. MS RSA 8 (CMA 500); and
8. MS RSA 9 (CMA 501).

The term ''Divestiture Assets'' shall also include all types of assets, tangible and intangible, used by Centennial in the operation of its mobile wireless telecommunications services business in the Lake Charles MSA (CMA 197), if plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana, determines that defendants must divest Centennial's mobile wireless telecommunications services businesses in the Lake Charles MSA (CMA 197) to ensure a successful divestiture of the Divestiture Assets in the Lafayette LA MSA (CMA 174), LA RSA 5 (CMA 458), LA RSA 6 (CMA 459), and LA RSA 7 (CMA 460). To ensure that the divested mobile wireless telecommunications services businesses remain viable, ongoing businesses, the term ''Divestiture Assets'' shall be construed broadly to accomplish the complete divestiture of the entire mobile wireless telecommunications services business of Centennial in each of the CMA license areas being divested.

The Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records,

accounts, and historic and current business plans that relate primarily to the mobile wireless telecommunications services businesses being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property that relate primarily to the mobile wireless telecommunications services businesses being divested, including: (i) Any intellectual property created during the time period that the Divestiture Assets are operated by a Management Trustee or Divestiture Trustee; and (ii) all intellectual property rights under third-party licenses that are capable of being transferred to the Acquirer(s) either in their entirety, for assets described in (a) below, or through a license obtained through or from defendants, for assets described in (b) below. The Divestiture Assets shall also include 1) Multi-line Consumer Customer contracts if the account billing address is located within any of the CMAs where assets are required to be divested, and 2) Multi-line Business Customer contracts if the primary business address for that customer is located within any of the license areas where assets are required to be divested, and further, any subscriber who obtains mobile wireless telecommunications services through any Multi-line Business Customer contract retained by defendants and who is located within the license areas identified above, shall be given the option to terminate its relationship with defendants, without financial cost, at any time within one year of the closing of the Transaction. Defendants shall provide written notice to these Multi-line Business Customers within 45 days after the closing of the Transaction of the option to terminate.

The divestiture of the Divestiture Assets shall be accomplished by:

a. Transferring to the Acquirer(s) the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of defendants' overall mobile wireless telecommunications services business that must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are not capable of being divided between the divested mobile wireless telecommunications services businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to the approval of plaintiff United States, shall not be divided); and

b. Granting to the Acquirer(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period, subject to the approval of plaintiff United States, and at the election of the Acquirer(s), to use any of defendants' retained assets under paragraph (a) above used in operating the mobile wireless telecommunications services businesses being divested, so as to enable the Acquirer(s) to continue to operate the divested mobile wireless telecommunications services businesses without impairment. Defendants shall identify in a schedule submitted to plaintiff United States and filed with the Court as expeditiously as possible following the filing of the Complaint, and in any event prior to any divestiture and before the approval by the Court of this Final Judgment, any and all intellectual property rights under third-party licenses that are used by the mobile wireless telecommunications services businesses being divested that defendants could not transfer to the Acquirer(s) entirely or by license without third-party consent, the specific reasons why such consent is necessary, and how such consent would be obtained for each asset.

F. ''Multi-line Business Customer'' means a corporate or business customer that contracts with a defendant for the provision of mobile wireless telecommunications services to the corporate or business customers' employees or members over multiple devices.

G. ''Multi-line Consumer Customer'' means a consumer that contracts with a defendant for the provision of mobile wireless telecommunications services to the consumer and the consumer's family or group members over multiple devices.

H. ''Transaction'' means the Agreement and Plan of Merger among AT&T Inc., Independence Merger Sub Inc., and Centennial Communications Corp., dated November 7, 2008.

III. Applicability

A. This Final Judgment applies to defendants AT&T and Centennial, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 120 days after consummation of the Transaction, or five calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, or, if applicable, to a Divestiture Trustee designated pursuant to Section V of this Final Judgment. Plaintiff United States, in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, may agree to one or more extensions of this time period not to exceed 60 calendar days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Divestiture Assets by defendants or the Divestiture Trustee, if applications have been filed or are on file with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which FCC approval has not been issued until five days after such approval is received. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this Final Judgment.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants shall promptly make known, if they have not already done so, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work product privileges. Defendants shall make available such information to plaintiffs at the same time that such information is made available to any other person. Notwithstanding the provisions of this paragraph, with the consent of plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, the defendants may enter into exclusive negotiations to sell all or any part of the Divestiture Assets and may limit their obligations under this paragraph to the provision of information to a single potential buyer for the duration of those negotiations.

C. Defendants shall provide the Acquirer(s) and plaintiffs information relating to the personnel involved in the operation, development, and sale or license of the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is the operation, development, or sale or license of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial,

operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer(s) that (1) the Divestiture Assets will be operational on the date of sale, and (2) every wireless spectrum license that relates to the mobile wireless telecommunications services business being divested is in full force and effect on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, licensing, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that there are no material defects in the environmental, zoning, licensing or other permits pertaining to the operation of each asset and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, licensing or other permits relating to the operation of the Divestiture Assets.

H. Unless plaintiff United States, in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, otherwise consents in writing, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy plaintiff United States in its sole discretion that these assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services. The divestiture of the Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall be made to an Acquirer or Acquirers that, in plaintiff United States' sole judgment, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services; and

2. Shall be accomplished so as to satisfy plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, that none of the terms of any agreement between an Acquirer(s) and defendants shall give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the ability of the Acquirer to compete effectively.

I. The Divestiture Assets listed in each numbered subsection below shall be divested together to a single Acquirer, provided that it is demonstrated to the sole satisfaction of plaintiff United States, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint:

1. Northern Louisiana
a. Alexandria MSA (CMA 205);
b. LA RSA 3 (CMA 456);
2. Southern Louisiana
a. Lafayette MSA (CMA 174);
b. LA RSA 5 (CMA 458);
c. LA RSA 6 (CMA 459);
d. LA RSA 7 (CMA 460); and
3. Mississippi
a. MS RSA 8 (CMA 500);
b. MS RSA 9 (CMA 501).

Further, if defendants are required to divest Centennial's mobile wireless telecommunications services business in Lake Charles MSA (CMA 197) as part of the Divestiture Assets, these assets must be divested to the Acquirer of the Southern Louisiana Divestiture Assets as defined in the second numbered subsection above. In addition to the foregoing, nothing in this section shall be construed as limiting the ability of an Acquirer to purchase the assets in more than one numbered subsection, and defendants shall be required to consider bids from potential acquirers that are contingent on the acquisition of all of the assets in more than one of the numbered subsections. With the written approval of plaintiff United States, in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, defendants or the Divestiture Trustee may sell, to a single acquirer, fewer than all of the assets contained in the numbered subsections above, to facilitate prompt divestiture to an acceptable Acquirer(s).

J. At the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer(s) for a period of up to one year. Plaintiff United States, in its sole discretion, may agree to one or more three- to six-month extensions of this one-year time period upon providing notice to the Court. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

K. To the extent that the Divestiture Assets use intellectual property, as required to be identified by Section II.D, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV.A, defendants shall notify plaintiff United States, and with respect to the Divestiture Assets in Louisiana plaintiff State of Louisiana, of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of plaintiff United States, and after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, the Court shall appoint a Divestiture Trustee selected by plaintiff United States and approved by the Court to effect the divestiture of the Divestiture Assets. The Divestiture Trustee will have all the rights and responsibilities of the Management Trustee who may be appointed pursuant to the Preservation of Assets Stipulation and Order, and will be responsible for:

1. Accomplishing divestiture of all Divestiture Assets transferred to the Divestiture Trustee from defendants, in accordance with the terms of this Final Judgment, to an Acquirer(s) approved by plaintiff United States, in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, under Section IV.A of this Final Judgment; and

2. Exercising the responsibilities of the licensee of any transferred Divestiture Assets, and controlling and operating any transferred Divestiture Assets, to ensure that the businesses remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services, until they are divested to an Acquirer(s), and the Divestiture Trustee shall agree to be bound by this Final Judgment.

B. Defendants shall submit a proposed trust agreement (''Trust Agreement'') to plaintiff United States, which must be consistent with the terms of this Final Judgment and which must receive approval by plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, who shall communicate to defendants within 10 business days its approval or disapproval of the proposed Trust Agreement, and which must be executed by the defendants and the Divestiture Trustee within five business days after approval by plaintiff United States.

C. After obtaining any necessary approvals from the FCC for the assignment of the licenses of the Divestiture Assets to the Divestiture Trustee, defendants shall irrevocably divest the remaining Divestiture Assets to the Divestiture Trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to Acquirer) and control such assets, subject to the terms of the approved Trust Agreement.

D. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to plaintiff United States, in its sole judgment, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.G of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order and any investment bankers, attorneys or

other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

E. In addition, notwithstanding any provision to the contrary, plaintiff United States, in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, may (1) require defendants to include additional assets, and (2) with the written approval of plaintiff United States, allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the Divestiture Trustee.

F. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiff United States and the Divestiture Trustee within ten calendar days after the Divestiture Trustee has provided the notice required under Section VI.

G. The Divestiture Trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff United States approves, and shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished, but timeliness is paramount.

H. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants shall develop financial and other information relevant to the assets to be divested as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

I. After a Divestiture Trustee is appointed, the Divestiture Trustee shall file monthly reports with plaintiff United States, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

J. If the Divestiture Trustee has not accomplished the divestitures ordered under the Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to plaintiff United States, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by plaintiff United States, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana.

K. After defendants transfer the Divestiture Assets to the Divestiture Trustee, and until those Divestiture Assets have been divested to an Acquirer or Acquirers approved by plaintiff United States pursuant to Sections IV.A and IV.H, the Divestiture Trustee shall have sole and complete authority to manage and operate the Divestiture Assets and to exercise the responsibilities of the licensee and shall not be subject to any control or direction by defendants. Defendants shall not use, or retain any economic interest in, the Divestiture Assets transferred to the Divestiture Trustee, apart from the right to receive the proceeds of the sale or other disposition of the Divestiture Assets.

L. The Divestiture Trustee shall operate the Divestiture Assets consistent with the Preservation of Assets Stipulation and Order and this Final Judgment, with control over operations, marketing, and sales. Defendants shall not attempt to influence the business decisions of the Divestiture Trustee concerning the operation and management of the Divestiture Assets, and shall not communicate with the Divestiture Trustee concerning divestiture of the Divestiture Assets or take any action to influence, interfere with, or impede the Divestiture Trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the Divestiture Trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the Divestiture Trustee, if requested to do so, with whatever resources or cooperation may be required to complete divestiture of the Divestiture Assets and to carry out the requirements of the Preservation of Assets Stipulation and Order and this Final Judgment. Except as provided in this Final Judgment and the Preservation of Assets Stipulation and Order, in no event shall defendants provide to, or receive from, the Divestiture Trustee or the mobile wireless telecommunications services businesses any non-public or competitively sensitive marketing, sales, pricing or other information relating to their respective telecommunications businesses.

VI. Notice of Proposed Divestitures

A. Within the later of two (2) business days following (i) the execution of a definitive divestiture agreement, or (ii) the filing of the Complaint in this action, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify plaintiff United States, and with respect to the Divestiture Assets in Louisiana, defendants shall notify plaintiff State of Louisiana, in writing of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within 15 calendar days of receipt of notice by plaintiff United States and plaintiff State of Louisiana if notice was given to plaintiff State of Louisiana, plaintiff United States and plaintiff State of Louisiana, if it received notice, may request from defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within 15 calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within 30 calendar days after receipt of notice or within 20 calendar days after plaintiff United States and plaintiff State of Louisiana, if it received notice, have been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, plaintiff United States, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff United States provides written notice that it does not object, the divestiture may be consummated, subject

only to defendants' limited right to object to the sale under Section V.F of this Final Judgment. Absent written notice that plaintiff United States does not object to the proposed Acquirer or upon objection by plaintiff United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.F, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court and cease use of the Divestiture Assets during the period that the Divestiture Assets are managed by the Management Trustee. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestitures have been completed under Section IV or V, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit also shall include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by plaintiff United States, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, to information provided by defendants, including limitation on information, shall be made within 14 calendar days of receipt of such affidavit.

B. Within 20 calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiffs an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within 15 calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice (including consultants and other persons retained by plaintiff United States) shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiff United States's option, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff United States to any person other than an authorized representative of the executive branch of plaintiff United States, plaintiff State of Louisiana, or, pursuant to a customary protective order or waiver of confidentiality by defendants, the FCC, except in the course of legal proceedings to which plaintiff United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then plaintiff United States shall give defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire or lease any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and plaintiff United States's response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

In the United States District Court for the District Of Columbia

United States of America, and State of Louisiana, *Plaintiff,* v. AT&T Inc., and Centennial Communications Corp., *Defendants.* No. 1:09–cv–01932 Assigned To: Filed: 10/13/2009.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated November 7, 2008, pursuant to which AT&T Inc. (''AT&T'') will acquire Centennial Communications Corp. (''Centennial''). Plaintiffs United States and the State of Louisiana filed a civil antitrust Complaint on October 13, 2009, seeking to enjoin the proposed acquisition. The Complaint alleges that the effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in eight Cellular Market Areas (''CMAs'') in Louisiana and Mississippi, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher prices, lower quality service, and fewer choices of mobile wireless telecommunications services providers for consumers residing in these areas.

At the same time the Complaint was filed, plaintiffs also filed a Preservation of Assets Stipulation and Order (''Stipulation'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest mobile wireless telecommunications services businesses and related assets in the eight CMAs (the ''Divestiture Assets''). Under the terms of the Stipulation, defendants will take certain steps to ensure that, during the pendency of the ordered divestitures, the Divestiture Assets are preserved and operated as competitively independent, economically viable ongoing businesses without influence by defendants.

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants also have stipulated that they will comply with the terms of the Stipulation and the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, defendants also have committed to continue to abide by its requirements and those of the Stipulation until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

AT&T, with headquarters in Dallas, Texas, is a corporation organized and existing under the laws of the State of Delaware. AT&T is one of the world's largest providers of communications services. AT&T is the second largest mobile wireless telecommunications services provider in the United States as measured by subscribers, provides mobile wireless telecommunications services in 50 states, and serves in excess of 79 million wireless subscribers. In 2008, AT&T earned mobile wireless telecommunications services revenues in excess of $44 billion, and its total revenues were in excess of $124 billion.

Centennial, with headquarters in Wall, New Jersey, is a corporation organized and existing under the laws of the State of Delaware. Centennial is the eighth-largest mobile wireless telecommunications services provider in the United States as measured by subscribers, and provides mobile wireless telecommunications services in six states, Puerto Rico, and the United States Virgin Islands. In Puerto Rico, Centennial is also a competitive local exchange provider. For the fiscal year ending May 31, 2009, Centennial had approximately 1.1 million wireless subscribers and approximately 694,900 access line equivalents in Puerto Rico, and earned approximately $1 billion in total revenues, of which approximately 85% percent were generated by Centennial's wireless businesses.

Pursuant to the Agreement and Plan of Merger, AT&T will acquire Centennial for approximately $944 million. If this transaction is consummated, AT&T and Centennial combined would have approximately 80 million wireless subscribers in the United States, with approximately $45 billion in mobile wireless telecommunications services revenues. The proposed transaction, as initially agreed to by defendants, would lessen competition substantially for mobile wireless telecommunications services in six CMAs covering southwestern and central Louisiana and two CMAs in the southwestern corner of Mississippi. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiffs.

B. Mobile Wireless Telecommunications Services Industry

Mobile wireless telecommunications services allow customers to make and receive telephone calls and obtain data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly valued by customers more than 270 million people in the United States own mobile wireless telephones. In 2008, revenues from the sale of mobile wireless telecommunications services in the United States were over $148 billion. To provide service, mobile wireless telecommunications services providers must deploy extensive networks of switches, radio transmitters, and receivers and interconnect their networks with the networks of wireline carriers and other mobile wireless telecommunications services providers.

In the early to mid-1980s, the FCC issued two cellular licenses in the 800 MHz band, for each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Market Areas'' or ''CMAs''), totaling 734 CMAs covering the entire United States. The first mobile wireless voice systems deployed using this cellular spectrum were based on analog technology, now referred to as first-generation or ''1G'' technology.

In 1995, the FCC licensed additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1900 MHz band and are divided into six blocks which are divided among Major Trading Areas (''MTAs'') and Basic Trading Areas (''BTAs''). MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing network capacity, shrinking the size of handsets, and extending handset battery life. Although there are a number of providers holding spectrum licenses in each area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum generally have found it less attractive to build out in rural areas.[(1)]

Today, more than 95 percent of the total U.S. population lives in counties where three or more mobile wireless telecommunications services operators offer service. Nearly all mobile wireless voice services have migrated from analog to digital-based second-generation or ''2G'' technologies, using GSM (global standard for mobility) or CDMA (code division multiple access). More advanced technologies (''2.5G'' and ''3G'') have also been widely deployed supporting the provision of mobile wireless data services. Wireless carriers are in the process of evaluating, testing and deploying even more advanced wireless data technologies, such as WiMAX and Long Term Evolution, which will offer higher data transmission rates.

C. The Competitive Effects of the Transaction on Mobile Wireless Telecommunications Services

Mobile wireless telecommunications services is a relevant product market. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Because fixed wireless services are not mobile, they are not regarded by consumers of mobile wireless telecommunications services to be a reasonable substitute for those services. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable.

The United States comprises numerous local geographic markets for mobile wireless telecommunications services.[(2)] A large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they live, work, and travel on a regular basis. The geographic areas in which the FCC has licensed mobile wireless telecommunications services providers often represent the core of the business and social spheres within which a group of customers has the same competitive choices for mobile wireless telephone services. The number of and identity of mobile wireless telecommunications services providers varies among geographic areas, as does the quality of services and breadth of geographic coverage offered by providers. Some mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, varying their prices by geographic area.

The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. § 18, where the transaction would substantially lessen competition for mobile wireless telecommunications services are effectively

represented by the following FCC spectrum licensing areas: Lafayette LA MSA (CMA 174); Alexandria LA MSA (CMA 205); LA RSA 3 (CMA 456); LA RSA 5 (CMA 458); LA RSA 6 (CMA 459); LA RSA 7 (CMA 460); MS RSA 8 (CMA 500); and MS RSA 9 (CMA 501). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers that do not offer services in these geographic areas to make a small but significant price increase in the relevant geographic markets unprofitable.

These geographic areas of concern for mobile wireless telecommunications services were identified through a fact-specific, market-by-market analysis that included consideration of, but was not limited to, the following factors: the number of mobile wireless telecommunications services providers and their competitive strengths and weaknesses; AT&T's and Centennial's market shares, along with those of the other providers; whether additional spectrum is, or is likely soon to be, available; whether any providers are limited by insufficient spectrum or other factors in their ability to add new customers; concentration in the market, and the breadth and depth of coverage by different providers in each area and in the surrounding area; each carrier's network coverage in relationship to the population density of the license area; each provider's retail presence; local wireless number portability data; and the likelihood that any provider would expand its existing coverage or that new providers would enter.

In seven of the eight cellular license areas described above, AT&T and Centennial are significant providers of mobile wireless telecommunications services (based on subscribers), and together their combined share in each area ranges from 51% to 89%. In the eighth area, MS RSA 9, AT&T and Centennial hold a large portion of the cellular licenses covering the CMA and have fairly extensive networks. As is true of several of the other relevant geographic areas, MS RSA 9 is mostly rural. Providers have found that cellular spectrum, given its characteristics, is more efficient in serving rural areas. Consequently, the holders of PCS licenses in MS RSA 9 have not fully constructed their networks throughout the CMA, opting instead to serve only a few areas where the population density is higher or there are major highways. The PCS spectrum holders are weak competitors and will remain so in the portions of MS RSA 9 where the merging parties will hold all the cellular spectrum post-merger. Thus, in each of the eight relevant geographic markets, AT&T and Centennial are the other's closest competitor for a significant set of customers.

The relevant geographic markets for mobile wireless services are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to the Complaint, concentration in these geographic areas today ranges from over 2900 to more than 6576, which is well above the 1800 threshold at which plaintiffs consider a market to be highly concentrated. After AT&T's proposed acquisition of Centennial is consummated, the HHIs in the relevant geographic areas will range from over 4500 to more than 8100, with increases in the HHI as a result of the merger ranging from over 200 to over 3350, significantly beyond the thresholds at which plaintiffs consider a transaction likely to cause competitive harm.

Competition between AT&T and Centennial in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services than otherwise would have existed in these geographic markets. In these areas, consumers consider AT&T and Centennial to be particularly attractive competitors because other providers' networks often lack coverage or provide lower-quality service. If the proposed acquisition is consummated, competition between AT&T and Centennial in mobile wireless telecommunications services will be eliminated in these markets and the relevant markets for mobile wireless telecommunications services will become substantially more concentrated. As a result, the loss of competition between AT&T and Centennial will increase the merged firm's incentive and ability in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

Entry by a new mobile wireless services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring spectrum licenses and the build out of a network. Therefore, any entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from AT&T's proposed acquisition of Centennial, if it were consummated. Although the FCC recently auctioned more spectrum that can be used for mobile wireless telecommunications services, it is unlikely that networks will be constructed using this spectrum to support entry in the relevant geographic markets in the next two to three years as providers will find it more attractive to deploy services initially in areas with larger populations and greater demand.

For these reasons, plaintiffs concluded that AT&T's proposed acquisition of Centennial likely would substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in the relevant geographic areas alleged in the Complaint.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in mobile wireless telecommunications services in the geographic areas of concern. The proposed Final Judgment requires defendants to divest the Divestiture Assets within 120 days after the consummation of the Transaction, or five days after notice of the entry of the Final Judgment by the Court, whichever is later. The Divestiture Assets are essentially the entire mobile wireless telecommunications services businesses of Centennial in the eight relevant geographic areas where AT&T and Centennial are among the most significant competitors for mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, that the assets will be operated by the purchaser as a viable, ongoing business that can compete effectively in each relevant area. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

If plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana, determines that defendants must also divest Centennial's mobile wireless telecommunications services businesses in the Lake Charles MSA (CMA 197) to ensure a successful divestiture of the Divestiture Assets in the Lafayette LA MSA (CMA 174), LA RSA 5 (CMA 458), LA RSA 6 (CMA 459), and LA RSA 7 (CMA 460), defendants shall also divest all types of assets, tangible and intangible, used by Centennial in the operation of its mobile wireless telecommunications services business in the Lake Charles MSA (CMA 197).

The proposed Final Judgment requires that a single purchaser acquire all of the Divestiture Assets in each of the following numbered subsections:

1. Northern Louisiana
a. Alexandria MSA (CMA 205);
b. LA RSA 3 (CMA 456);
2. Southern Louisiana
a. Lafayette MSA (CMA 174);
b. LA RSA 5 (CMA 458);
c. LA RSA 6 (CMA 459);
d. LA RSA 7 (CMA 460); and
3. Mississippi
a. MS RSA 8 (CMA 500);
b. MS RSA 9 (CMA 501).

Further, if defendants are required to divest Centennial's mobile wireless telecommunications services business in Lake Charles MSA (CMA 197) as part of the Divestiture Assets, these assets must be divested to the Acquirer of the Southern Louisiana Divestiture Assets as defined in the second numbered subsection above.

The CMAs have been grouped to reflect the fact that carriers frequently are more competitive where they serve contiguous areas. Some customers often travel across FCC licensing areas, so the ability to serve a larger contiguous area can be an important feature for selling the product in each affected market. Moreover, there may be significant efficiencies associated with serving a broader geographic area. In deciding on the particular packages to require, plaintiff United States recognized that combining areas that share a significant community of interest provides greater assurance that the buyer will be an effective competitor. Plaintiff United States also recognized, however, that larger packages might discourage potential buyers who might otherwise have the strongest incentives to replace the lost competition in any one

particular area. The proposed Final Judgment strikes a balance between these potential issues by creating bundles that are geographically linked but allowing potential buyers to effectively suggest larger packages by bidding conditionally on multiple packages. The proposed Final Judgment also gives plaintiff United States in its sole discretion, after consultation with plaintiff State of Louisiana with respect to the Divestiture Assets in Louisiana, the flexibility to allow even smaller packages of assets as appropriate to ensure a successful divestiture.

Additionally, Section IV.J of the proposed Final Judgment permits defendants to enter into a contract with the Acquirer(s) for transition services that are customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing for a period of up to one year. Transition services agreements allow acquirers to quickly begin operating the newly-acquired wireless businesses and prevent customers from experiencing service disruptions. This section also allows plaintiff United States, in its sole discretion, to approve one or more three- to six-month extensions of this one-year period, after providing notice to the Court. This provision allows plaintiff United States the flexibility to extend the agreement only in those instances where, despite the best efforts of defendants and the Acquirer(s), complete transition of the acquired mobile wireless telecommunications services business could not be completed within the one-year period, due to complexities inherent in a transition of the systems and network used in those business operations. While plaintiff United States recognizes the importance of the buyer's quick transition to operating without the support of defendants, there are circumstances where a limited extension should be granted, when it is demonstrated to the satisfaction of plaintiff United States that an extension of the one-year period is in the interest of consumers.

A. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which the United States seeks a divestiture remedy, it requires completion of the divestitures within the shortest time period reasonable under the circumstances. Section IV.A of the proposed Final Judgment in this case requires divestiture of the Divestiture Assets, within 120 days after the consummation of the Transaction, or five days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff United States in its sole discretion, upon consultation with the plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, may extend the date for divestiture of the Divestiture Assets by up to 60 days. Because the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section IV.A provides that if applications for transfer of a wireless license have been filed with the FCC, but the FCC has not acted dispositively before the end of the required divestiture period, the period for divestiture of those assets shall be extended until five days after the FCC has acted. This extension is to be applied only to the individual Divestiture Assets affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Divestiture Assets for which license transfer approval is not required or has been granted.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Divestiture Assets have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Stipulation.

B. Use of a Management Trustee

The Stipulation filed simultaneously with this Competitive Impact Statement ensures that the Divestiture Assets remain an ongoing business concern prior to divestiture. To accomplish this objective, the Stipulation provides for the appointment of a management trustee selected by plaintiff United States, after consultation with the plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, to oversee the operations of the Divestiture Assets. The appointment of a management trustee is appropriate because the Divestiture Assets are not independent facilities that can be held separate and operated as stand-alone units, but are an integral part of a larger network which, to maintain their competitive viability and economic value, should remain part of that network during the divestiture period. A management trustee will oversee the continuing relationship between defendants and these assets to ensure that these assets are preserved and supported by defendants during this period, yet run independently. The management trustee will have the power to operate the Divestiture Assets in the ordinary course of business, so that they will remain independent and uninfluenced by defendants and so that the Divestiture Assets are preserved and operated as an ongoing and economically viable competitor to defendants and to other mobile wireless telecommunications services providers. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; ensure defendants' compliance with the Stipulation and the proposed Final Judgment; and maximize the value of the Divestiture Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Stipulation provides that defendants will pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After his or her appointment becomes effective, the management trustee will file monthly reports with plaintiffs setting forth efforts taken to accomplish the goals of the Stipulation and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities. Finally, the management trustee may become the divestiture trustee, pursuant to the provisions of Section V of the proposed Final Judgment.

C. Use of a Divestiture Trustee

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff United States, after consultation with the plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, to effect the divestitures. As part of this divestiture, defendants must continue, as has been the practice while the businesses have been managed by the Management Trustee, to relinquish any direct or indirect financial control and any direct or indirect role in management. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will have the legal right to control the Divestiture Assets until they are sold to a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Divestiture Assets, and the termination of the divestiture trust. The divestiture trustee will have the obligation and the sole responsibility, under Section V.D, for the divestiture of any transferred Divestiture Assets. The divestiture trustee has the authority to accomplish divestitures at the earliest possible time and ''at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee.'' In addition, to ensure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, plaintiff United States, in its sole discretion after consultation with the plaintiff State of Louisiana with respect to Divestiture Assets located in Louisiana, may require defendants to include additional assets, or allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the divestiture trustee.

The divestiture trustee will not only have responsibility for sale of the Divestiture Assets, but also will be the authorized holder of the wireless licenses, with full responsibility for the operations, marketing, and sales of the wireless businesses to be divested, and will not be subject to any control or direction by defendants. Defendants will have no role in the operation, or management of the Divestiture Assets other than the right to receive the proceeds of the sale.

Defendants also will retain certain obligations to support to the Divestiture Assets and cooperate with the divestiture trustee in order to complete the divestiture.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. The divestiture

trustee's commission will be structured, under Section V.G of the proposed Final Judgment, to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and plaintiffs setting forth his or her efforts to accomplish the divestitures. Section V.J requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six months after the assets are transferred to the divestiture trustee. At the end of six months, if all divestitures have not been accomplished, the trustee and plaintiffs will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the provision of mobile wireless telecommunications services. The divestitures of the Divestiture Assets will preserve competition in mobile wireless telecommunications services by maintaining an independent and economically viable competitor in the relevant geographic areas.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 405 Fifth Street, NW., Suite 7000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against AT&T's acquisition of Centennial. Plaintiffs are satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the provision of mobile wireless telecommunications services in the relevant areas identified in the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60 day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

A. The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

B. The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995). *See generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[3]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[5]

VIII. Determinative Documents

There are no determinative materials of documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: October 13, 2008.

Respectfully submitted,

_____/s/_____

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Footnotes

1. During the past two years, the FCC has auctioned off additional spectrum that can be used to support mobile wireless telecommunications services, including Advanced Wireless Spectrum (1710–1755 MHz and 2110–2155 MHz bands) and 700 MHz band spectrum. However, it will be several years before mobile wireless telecommunications services utilizing this spectrum are widely deployed, especially in rural areas.

2. The existence of local markets does not preclude the possibility of competitive effects in a broader geographic area, such as a regional or national area, though plaintiff United States does not allege such effects in this transaction.

3. The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for the court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006). *See also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

4. *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

5. *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 28, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Main Fan Operation and Inspection.

OMB Control Number: 1219–0030.

Form Number: N/A.

Estimated Number of Respondents: 6.

Estimated Total Annual Burden Hours: 1,980.

Estimated Total Annual Cost Burden (does not include hourly wage costs): $1,200.

Affected Public: Business or other for profits (mines).

Description: Main fans for all underground metal and nonmetal gassy mines must have pressure-recording systems. The fans are required to be examined daily while operating if persons are underground. The pressure-recording systems indicate whether the fans are in good operating condition. 30 CFR 57.22204 requires the pressure recordings to be kept one year. Information collected through the pressure recordings has been and is used by mine operators and MSHA for maintaining a constant vigilance on mine ventilation and for ensuring that unsafe conditions are identified early and corrected. Technical consultants may occasionally review such information in addressing main fan or ventilation problems. For additional information, see related notice published at Vol. 74 FR 40610 on August 12, 2009.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Escape and Evacuation Plan (Pertains to Surface Coal Mines & Surface Work Areas of Underground Coal Mines).

OMB Control Number: 1219–0051.

Form Number: N/A.

Estimated Number of Respondents: 351.

Estimated Total Annual Burden Hours: 1,695.

Estimated Total Annual Cost Burden (does not include hourly wage costs): $0.

Affected Public: Business or other for profits (mines).

Description: The Department's regulations at 30 CFR 77.1101 require operators of surface coal mines, including surface facilities, and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of exiting work areas in the event of a fire. The escape and evacuation plan is prepared by the mine operator and is used by mines, MSHA, and persons involved in rescue and recovery. The plan is used to instruct employees in the proper methods of exiting structures in the event of a fire. MSHA inspection personnel use the plan to determine compliance with the standard requiring a means of escape and evacuation be established and the requirement that employees be instructed in the procedures to follow should a fire occur. For additional information, see related notice published at Vol. 74 FR 40611 on August 12, 2009.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Records of Preshift and Onshift Inspections of Slope and Shaft Areas. (Pertains to slope and shaft sinking operations at coal mines).

OMB Control Number: 1219–0082.

Form Number: N/A.

Estimated Number of Respondents: 35.

Estimated Total Annual Burden Hours: 14,823.

Estimated Total Annual Cost Burden (does not include hourly wage costs): $0.

Affected Public: Business or other for profits (mines).

Description: The Department's regulations at 30 CFR 77.1901 require coal mine operators to conduct inspections of slope and shaft areas of hazardous conditions, including tests for methane and oxygen deficiency, before and during each shift and before and after blasting. Records of the results of the inspections are required to be kept. The records are used by slope and shaft supervisors and employees, State mine inspectors, and Federal mine inspectors. The records show that the examinations and tests were conducted and give insight into the hazardous conditions that have been encountered and those that may be encountered. The records of inspections greatly assist those who use them in making decisions that will ultimately affect the safety and health of slope and shaft sinking employees. For additional information, see related notice published at Vol. 74 FR 40612 on August 12, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–26362 Filed 11–2–09; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–093)]

NASA Advisory Committee; Notice of Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of the Charter for the NASA Advisory Council.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Public Law 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration (NASA) has determined that a renewal and amendment of the Charter for the Agency-established NASA Advisory Council is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. In connection with this renewal, a number of amendments have been made to the Charter as part of the overall restructuring of the NASA Advisory Council. The purpose of the NASA Advisory Council is to provide advice and make recommendations to the NASA Administrator on Agency programs, policies, plans, financial controls and other matters pertinent to the Agency's responsibilities.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Advisory Committee Management Officer, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–4510.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–26419 Filed 11–2–09; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0474]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 8, 2009 to October 21, 2009. The last

biweekly notice was published on October 20, 2009 (74 FR 53774).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule,

which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: August 17, 2009.

Description of amendment request: The proposed amendment would (1) relocate the specific value for the fuel oil and lube oil storage volumes from Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' to the TS Bases; (2) relocate the specific value for day tank fuel oil volume from TS 3.8.1, ''AC [alternating current] Sources—Operating,'' to the TS Bases; and (3) relocate the specific standard for particulate concentration testing of diesel fuel oil from TS 5.5.9, ''Diesel Fuel Oil Testing Program,'' to the TS Bases.

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity to comment in the **Federal Register** on February 22, 2006 (71 FR 9179), on changes proposed by Technical Specification Task Force (TSTF) traveler TSTF–374,'' Diesel Fuel Oil Testing Program,'' for possible amendments to revise the plant-specific TSs to relocate the standards for diesel fuel oil testing to licensee-controlled documents and add alternate criteria to the ''clear and bright'' acceptance test for new fuel oil, including a model safety evaluation and model no

significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the TSTF–374 models for referencing in license amendment applications in the **Federal Register** on April 21, 2006 (71 FR 20735).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Diesel Fuel Oil, Lube Oil, and Starting Air Specification relocates the volume of diesel fuel oil and lube oil required to support 7 day operation of the onsite diesel generators [(DGs)], and the volume equivalent to a 6 day supply, to licensee control. A similar approach is also proposed for the AC Sources—Operating Specification which relocates the specific volume of fuel oil required to be maintained in the day tank to the TS Bases. The specific volumes of fuel oil equivalent to a 7 and 6 day supply, and the one hour day tank supply, are calculated using the NRC approved methodology described in [NRC Regulatory Guide (RG)] 1.137 [Revision 1, ''Fuel Oil Systems for Standby Diesel Generators''] and [American National Standards Institute (ANSI)] N195 1976, [''Fuel Oil Systems for Standby Diesel-Generators].'' The specific volume of lube oil equivalent to a 7 and 6 day supply is based on the DG manufacturer's consumption values for the run time of the DG. The requirement(s) to maintain a 7 day supply of diesel fuel oil in subsystem storage, a 7 day supply of lube oil on-site, and a minimum of one hour of fuel oil in the day tank, continue to be met with this proposed change and thus remain consistent with the assumptions in the accident analyses. The actions required to be taken when the volume of fuel or lube oil is less than what is specified are not affected by this proposed change. Hence, neither the probability nor the consequences of any accident previously evaluated will be affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the Diesel Fuel Oil, Lube Oil, and Starting Air, and the AC Sources—Operating specifications do not involve physical alterations of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods of governing normal plant operation. The changes do not alter assumptions made in the safety analysis but ensure that the diesel generator operates as assumed in the accident analysis. The proposed changes are consistent with the safety analysis assumptions. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed changes to the Diesel Fuel Oil, Lube Oil, and Starting Air, and AC Sources—Operating specifications relocates the volume of diesel fuel oil and lube oil to licensee control. As the bases for the existing limits on diesel fuel oil and lube oil are not changed and the methods used to determine these limits have been previously approved, no change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

In its application dated August 17, 2009, the licensee also affirmed the applicability of the NSHC approved by the NRC in TSTF–374, as part of the consolidated line item process, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes relocate the specific ASTM [American Society for Testing and Materials] standard references from the Administrative Controls Section of TS to a licensee-controlled document. Requirements to perform testing in accordance with applicable ASTM standards are retained in the TS as are requirements to perform surveillances of both new and stored diesel fuel oil. Future changes to the licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, tests and experiments,'' to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to recognize more rigorous testing of water and sediment content. Relocating the specific ASTM standard references from the TS to a licensee-controlled document and allowing a water and sediment content test to be performed to establish the acceptability of new fuel oil will not affect nor degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems, and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The requirements retained in the TS continue to require testing of the diesel fuel oil to ensure the proper functioning of the DGs.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. Instituting the proposed changes will continue to ensure the use of applicable ASTM standards to evaluate the quality of both new and stored fuel oil designated for use in the emergency DGs. Changes to the licensee-controlled document are performed in accordance with the provisions of 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that diesel fuel oil testing is conducted such that there is no significant reduction in a margin of safety.

The ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The margin of safety provided by the DGs is unaffected by the proposed changes since there continue to be TS requirements to ensure fuel oil is of the appropriate quality for emergency DG use. The proposed changes provide the flexibility needed to improve fuel oil sampling and analysis methodologies while maintaining sufficient controls to preserve the current margins of safety.

[Therefore, the changes do not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 16, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification Section 3.7.D.2 to allow reactor operation to continue, in the event any containment isolation valve becomes inoperable, provided the affected penetration flow path is isolated by the use of at least one closed and de-activated automatic valve, closed manual valve, or blind flange.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change does not impact the probability of any design basis accident in that no accident initiators are impacted. The change does not impact accident mitigation. The proposed change provides equivalent requirements for conditions where there is an inoperable containment isolation valve so that accident mitigation systems function consistent with the licensing and design basis. The change ensures that the function of primary containment is maintained should there be an inoperable containment isolation valve by isolation of the penetration flow path using passive devices. Although the isolation means are not in all cases leak tested, leakage is not expected to be significant since the devices used for isolation are passive components that are in the isolated position. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change provides allowance for crediting passive isolation devices on lines that have been determined to have an inoperable containment isolation valve. The use of a passive component (i.e., another containment isolation valve in the affected line) to compensate for an inoperable isolation valve is already part of the licensing basis. The change expands the types of passive devices which may be used. Operation of existing installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not change any existing design requirements and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed change affects the types of passive devices that can be used as the containment boundary when a containment isolation valve is inoperable. The design of such devices would meet containment design requirements so that safety margins are maintained. Leakage through passive devices would be minimal and be within regulatory limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy Salgado.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: August 28, 2009.

Description of amendment request: The proposed amendment revises Technical Specification 3.4.5, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' to support implementation of an alternate method of verifying that leakage in the drywell is within limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change does not involve physical changes to any plant structure, system, or component. As a result, no new failure modes of the RCS leakage detection systems are being introduced. Additionally, the change being proposed will have no impact on the RCS leakage detection system that would impact initiating event frequency.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The RCS leakage detection systems do not perform an accident mitigating function. Emergency Core Cooling System, Reactor Protection System, and primary and secondary containment isolation actuations are not affected by the proposed change. The proposed change has no impact on any setpoints or functions related to these actuations. There are no changes in the types or significant increase in the amounts of any effluents released offsite.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change allows use of the drywell equipment drain system as an alternate method to verify that RCS leakage in the drywell is within TS limits. The drywell equipment drain system will continue to be used for leakage collection and quantification. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The current TSs require a periodic measurement of RCS leakage. The proposed change maintains the existing level of safety by allowing use of the DWEDS [drywell equipment drain sump] monitoring system to verify that RCS leakage in the drywell is within TS limits. No changes are being made to any of the RCS leakage limits specified in TS 3.4.4. The impact of the change is that the amount of unidentified and identified RCS leakage within the drywell will be quantified and evaluated as a single unidentified leakage value. This alternate method is more conservative than the current method.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: September 18, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.7, ''Inservice Testing Program,'' to align it with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Section 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2, and Class 3. Specifically, the TSs will be modified to incorporate TS Task Force (TSTF) 479–A, Revision 0, ''Changes to Reflect Revision of 10 CFR 50.55a,'' and TSTF 497–A, Revision 0, ''Limit Inservice Testing Program SR [Surveillance Requirement] 3.0.2 Application to Frequencies of 2 Years or Less.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will replace, within TS 5.5.7, references to Section XI of ASME Boiler and Pressure Vessel Code with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). In addition the proposed change adds words to TS 5.5.7.b which applies the extension allowance of Surveillance Requirement 3.0.2 to other normal and accelerated inservice testing frequencies of two years or less that were not included in the frequencies of the table listed in TS 5.5.7.a.

The proposed change is administrative, does not affect any accident initiators, does not affect the ability to successfully respond to previously evaluated accidents and does not affect radiological assumptions used in the evaluations. Thus, operation of the facility in accordance with the proposed change will not involve an increase in the probability or the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will replace, within TS 5.5.7 references to Section XI of ASME Boiler and Pressure Vessel Code with references to the ASME OM Code. In addition the proposed change also adds words to TS 5.5.7.b which applies the extension allowance of Surveillance Requirement 3.0.2 to other normal and accelerated inservice testing frequencies of two years or less that were not included in the frequencies of the table listed in TS 5.5.7.a.

The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or involve a change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increase in the amounts of any effluent that may be released offsite and there is no increase in individual or cumulative occupational exposure.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed change will replace, within TS 5.5.7 references to Section XI of ASME Boiler and Pressure Vessel Code with references to the ASME OM Code. In addition the proposed change also adds words to TS 5.5.7.b which applies the extension allowance of Surveillance Requirement 3.0.2 to other normal and accelerated inservice testing frequencies of two years or less that were not included in the frequencies of the table listed in TS 5.5.7.a.

The proposed change does not involve a modification to the physical configuration of the operating units or change the methods governing normal plant operation. The proposed change incorporates revisions to the ASME Code that results in a net improvement in the measures for testing pumps and valves. The safety functions of the applicable pumps and valves will be maintained.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Group, LLC, 750 East Pratt Street, 17 Floor, Baltimore, MD 21202.

NRC Branch Chief: Nancy L. Salgado.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are

problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: October 1, 2008, as supplemented by letters dated July 31 and September 17, 2009.

Brief description of amendment: The amendments modified Technical Specification (TS) 5.5.16, ''Containment Leakage Rate Testing Program,'' by adding exceptions to the provisions of U.S. Nuclear Regulatory Commission (NRC) Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' that would allow the next containment integrated leak rate test for each unit to be performed at a 15-year interval instead of the current 10-year interval for Units 1, 2, and 3.

Date of issuance: October 20, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1—176; Unit 2—176; Unit 3—176.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 18, 2008 (73 FR 68452). The supplemental letters dated July 31 and September 17, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 2009.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: November 13, 2008.

Brief description of amendment: The amendments modified Technical Specification (TS) 3.5.5, ''Refueling Water Tank (RWT),'' for Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 3, to increase the minimum required RWT level indications and the corresponding borated water volumes in TS Figure 3.5.5–1, ''Minimum Required RWT Volume,'' by 3 percent. The amendments also incorporate editorial changes to TS Figure 3.5.5–1 for PVNGS, Units 1, 2, and 3, to provide consistent formatting of the RWT volumetric values provided in the figure.

Date of issuance: October 21, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—177; Unit 2—177; Unit 3—177.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 30, 2008 (73 FR 79930).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 2009.

No significant hazards consideration comments received: No.

Carolina Power and Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: April 30, 2008, as supplemented by letters dated December 3, 2008, and June 30, 2009.

Brief description of amendment: The amendment revises Technical Specification Section 3.7.5a to restore the ultimate heat sink main reservoir minimum level to the value allowed by the initial operating license as a result of improvements made to the emergency service water system. The change will allow continued plant operation to a main reservoir minimum level of 206 feet mean sea level (MSL) in Modes 1–4, versus the current minimum allowed level of 215 feet MSL.

Date of issuance: October 14, 2009.

Effective date: Effective as of the date of issuance and shall be implemented within 120 days.

Amendment No.: 132.

Renewed Facility Operating License No. NPF–63: The amendment revises the technical specifications and facility operating license.

Date of initial notice in ***Federal Register:*** August 12, 2008 (73 FR 46929).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated October 14, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: October 22, 2007, as supplemented by letters dated April 3, August 14, and September 18, 2008, and August 31, 2009.

Brief description of amendment: The amendment revised the requirements of Technical Specification (TS) 3.4.12, ''RCS [reactor coolant system] Specific Activity,'' and TS 3.7.4, ''Secondary Specific Activity,'' as related to the use of an alternative source term (AST) associated with accident offsite and control room dose consequences. Implementation of the AST supports adoption of the control room envelope habitability controls in accordance with Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.''

Date of issuance: October 21, 2009.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 238.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications and license.

Date of initial notice in ***Federal Register:*** December 18, 2007 (72 FR 71708). The supplemental letters dated April 3, August 14, and September 18, 2008, and August 31, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station (Braidwood), Units 1 and 2, Will County, Illinois, Docket Nos. STN 50–454 and STN 50–455, Byron Station (Byron), Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendment: June 24, 2009, as supplemented by letters dated. August 14, August 31, and September 15, 2009.

Brief description of amendment: The amendments revise Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Program,'' to exclude

portions of the tube below the top of the SG tubesheet from periodic SG tube inspections and plugging or repair. In addition, the amendments revise the wording of reporting requirements in TS 5.6.9, ''Steam Generator (SG) Tube Inspection Report.'' For TS 5.5.9, the amendments incorporate a one-cycle alternate repair criteria in the provisions for SG tube repair for Braidwood, Unit 2, during refueling outage (RFO) 14 (fall 2009) and the subsequent operating cycle, and for Byron, Unit No. 2, during RFO 15 (spring 2010) and the subsequent operating cycle. These changes only affect Braidwood, Unit 2, and Byron, Unit No. 2; however, this action is docketed for both Braidwood and Byron units because the Braidwood TS are common to both Braidwood units, and the Byron TS are common to both Byron units.

Date of issuance: October 16, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days for Braidwood and, for Byron, prior to conducting the SG inspections required by TS 5.5.9 for the Byron, Unit No. 2, spring 2010 refueling outage (B2R15).

Amendment Nos.: Braidwood Unit 1–161; Braidwood Unit 2–161; Byron Unit No. 1–166; and Byron Unit No. 2–166.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revise the TSs and Licenses.

Date of initial notice in ***Federal Register:*** July 31, 2009 (74 FR 38234). The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendment: October 9, 2007, as supplemented by letter dated January 30, 2009.

Brief description of amendment: The amendments modify the technical specifications to risk-informed requirements regarding selected Required Action End States as provided in Technical Specification Task Force (TSTF) change traveler TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A, Revision 2.''

Date of issuance: October 20, 2009.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 233/226.

Renewed Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** December 4, 2007 (72 FR 68215). The January 30, 2009, supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 2009.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company (IandM), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendment: September 25, 2008.

Brief description of amendment: The amendment modifies Technical Specification Figures 4.3–1 and 4.3–2, which show allowable locations for nuclear fuel in the spent fuel pool storage racks. The figures currently show two different allowable storage patterns for four of the storage rack modules. The amendment modifies these two figures such that fuel may be located in any of these four individual modules in accordance with either figure to allow continued placement of new and intermediate burn-up fuel in the spent fuel pool as the storage racks approach capacity.

Date of issuance: October 8, 2009.

Effective date: As of the date of issuance and shall be implemented within 45 days from the date of issuance.

Amendment Nos.: Unit 1–311; Unit 2–293.

Facility Operating License Nos. DPR–58 and DPR–74: Amendment revised the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 16, 2008 (73 FR 76411).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 2009.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: June 8, 2009, as supplemented by letters dated August 20 and 27, and September 2 (two letters), 14, 17, and 28, 2009.

Brief description of amendments: The amendments revised Technical Specification (TS) 5.5.9.2, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator (SG) Program,'' to exclude portions of the tubes within the tubesheet from periodic SG inspections (establish alternate repair criteria). The amendments also revised TS 5.6.9, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator Tube Inspection Report,'' to remove reference to previous interim alternate repair criteria and provide specific reporting requirements for Comanche Peak Steam Electric Station (CPSES), Unit 2 during refueling outage 11 and the subsequent operating cycle for CPSES, Unit 2.

Date of issuance: October 9, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–149; Unit 2–149.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2009 (74 FR 36533). The supplements dated August 20 and 27, and September 2 (two letters), 14, 17, and 28, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 9, 2009.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 28, 2009, as supplemented on September 16, 18, and 25, 2009.

Description of amendment request: This amendment changes the inspection scope and repair requirements of Technical Specification (TS) Section 6.7.6.k, ''Steam Generator (SG) Program'' and the reporting

requirements of TS Section 6.8.1.7, ''Steam Generator Tube Inspection Report.'' The changes establish temporary alternate repair criteria for portions of the SG tubes within the tubesheet.

Date of issuance: October 13, 2009.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 123.

Facility Operating License No. NPF–86: The amendment revised the TS and the License.

Date of initial notice in ***Federal Register:*** July 21, 2009 (74 FR 35891). The supplemental letters dated September 16, 18 and 25, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 2009.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 30, 2009, as supplemented by letters dated June 30 and August 28, 2009.

Brief description of amendment: The amendment modifies the Fort Calhoun Station (FCS), Unit No. 1, Renewed Operating License No. DPR–40, by adding operability and surveillance testing requirements to the FCS Technical Specifications (TS) for the steam generator (SG) blowdown isolation on a reactor trip. Specifically, the changes revise TS Limiting Conditions for Operation (LCO) 2.15, Instrumentation and Control Systems, Table 2–4, Instrument Operating Conditions for Isolation Functions, to include operability requirements for SG blowdown isolation on a reactor trip and to add applicable footnotes. In addition, TS 3.1, Instrumentation and Control, Table 3–2, Minimum Frequencies for Checks, Calibrations and Testing of Engineered Safety Features, Instrumentation and Controls, is revised to include the surveillance test requirements for SG blowdown isolation on a reactor trip. The amendment changes TS LCO 2.15(1), to delete the words ''key operated'' associated with the bypass switches.

Date of issuance: October 9, 2009.

Effective date: As of its date of issuance and shall be implemented prior to startup from the 2009 refueling outage, which is scheduled to commence on November 1, 2009.

Amendment No.: 263.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 7, 2009 (74 FR 15774). The supplemental letters dated June 30 and August 28, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated October 9, 2009.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 10. 2009.

Brief description of amendments: The changes consist of deletion of Technical Specification 5.2.2.e for San Onofre Nuclear Generating Station, Units 2 and 3, which has been superseded by the new requirements regarding working hours for nuclear plant staff in Title 10 of the Code of Federal Regulations (10 CFR) part 26, subpart I. The changes are consistent with Technical Specification Task Force (TSTF) change traveler, TSTF–511, Revision 0, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR part 26.''

Date of issuance: October 20, 2009.

Effective date: Upon issuance; to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—221; Unit 3—214.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 11, 2009 (74 FR 40239).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: May 21, 2009, as supplemented on August 14 and September 29, 2009 (TSC 09–02).

Brief description of amendment: The proposed amendment revised Technical Specification (TS) Section 6.8.4.k, ''Steam Generator (SG) Program,'' for Unit 2 to allow the implementation of SG tubing alternate repair criteria for axial indications in the Westinghouse Electric Company explosive tube expansion region below the top of the tubesheet and specify the W* distance for the SG cold-legs.

Date of issuance: October 19, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 318.

Facility Operating License No. DPR–79: Amendment revised the technical specifications.

Date of initial notice in ***Federal Register:*** July 4, 2009 (74 FR 34048). The supplements dated August 14 and September 29, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated October 19, 2009.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 2, 2009, as supplemented by letters dated August 25, September 3 (two letters), and September 15, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Program,'' to exclude portions of the tubes within the tubesheet from periodic SG inspections (establish alternate repair criteria). The amendments also revised TS 5.6.10, ''Steam Generator Tube Inspection Report,'' to remove reference to previous interim alternate repair criteria and provide specific reporting requirements for Wolf Creek Generating Station (WCGS) during refueling outage 17 and the subsequent operating cycle for WCGS.

Date of issuance: October 19, 2009.

Effective date: As of the date of its issuance and shall be implemented prior to MODE 4 entry during startup from Refueling Outage 17.

Amendment No.: 186.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 21, 2009 (74 FR 35892). The supplements dated August 25, September 3 (two letters), and September 15, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 2009.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Southern Nuclear Operating Company, Inc., Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit 2, (FNP) Houston County, Alabama

Date of amendment request: October 8, 2009.

Description of amendment request: The proposed one-time change to the Technical Specification revises Limiting Condition for Operation 3.7.8, ''Service Water System (SWS),'' Action A, Completion Time from 72 hours to a one-time 7-day Completion Time to allow replacement of two of the FNP Unit 2 SWS Train A seismic support ring assemblies.

Date of Issuance: October 9, 2009.

Amendment No.: 177.

Facility Operating License No. (NPF–8): Amendment revises the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC):

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated October 9, 2009.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: John Stang (Acting).

Dated at Rockville, Maryland, this 22nd day of October 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–26168 Filed 11–2–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of November 2, 9, 16, 23, 30, December 7, 2009.

PLACE : Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 2, 2009

Tuesday, November 3, 2009

9:25 a.m.—Affirmation Session (Public Meeting) (Tentative). Duke Energy Carolinas, LLC (William States Lee III Nuclear Station, Unit 1 and 2); Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 3 and 4)—Referred Rulings on Contention Admissibility (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

9:30 a.m.—Briefing on Fire Protection Lessons Learned from Shearon Harris (Public Meeting). (Contact: Alex Klein, 301–415–2822.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of November 9, 2009—Tentative

Tuesday, November 10, 2009

9:30 a.m.—Briefing on NRC International Activities (Public Meeting). (Contact: Karen Henderson, 301–415–0202.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of November 16, 2009—Tentative

Tuesday, November 17, 2009

9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting). (Contact: Elva Bowden Berry, 301–415–1536.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of November 23, 2009—Tentative

There are no meetings scheduled for the week of November 23, 2009.

Week of November 30, 2009—Tentative

Tuesday, December 4, 2009

9:30 a.m.—Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Antonio Dias, 301–415–6805.)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

Week of December 7, 2009—Tentative

There are no meetings scheduled for the week of December 7, 2009.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: October 29, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–26515 Filed 10–30–09; 11:15 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; November 5, 2009, Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 74, Number 196, Page 52513) on October 13, 2009. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., November 5, 2009 in conjunction with OPIC's November 19, 2009 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: October 29, 2009.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E9–26505 Filed 10–30–09; 11:15 am]

BILLING CODE 3210–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Executive Resources Services Group, Center for Performance Management Systems and Evaluation, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between September 1, 2009, and September 30, 2009. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/*. A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are not codified in the code of Federal Regulations. These are agency specific exceptions.

Schedule A

Section 213.3111(d) Department of Homeland Security

(1) Not to exceed 1000 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after December 31, 2012.

Schedule B

No Schedule B authorities to report during September 2009.

Schedule C

The following Schedule C appointments were approved during September 2009.

Department of State

DSGS69970 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective September 8, 2009.

DSGS70046 Special Assistant to the Ambassador-At-Large for Global Women's Initiatives. Effective September 23, 2009.

DSGS69886 Assistant to the Chief of Protocol. Effective September 29, 2009.

DSGS69920 Staff Assistant to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective September 29, 2009.

DSGS69923 Assistant Chief of Protocol, Ceremonials. Effective September 29, 2009.

DSGS70030 Staff Assistant to the Assistant Secretary for Public Affairs. Effective September 29, 2009.

DSGS70038 Senior Advisor to the Under Secretary for Management. Effective September 29, 2009.

DSGS69928 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective September 30, 2009.

Department of the Treasury

DYGS00506 Special Assistant to the Senior Advisor. Effective September 17, 2009.

Department of Defense

DDGS17254 Defense Fellow to the Special Assistant for White House Liaison. Effective September 4, 2009.

DDGS17255 Special Assistant to the Assistant Secretary for Defense (Special Operations/Low Intensity Conflict/Interdependent Capabilities). Effective September 14, 2009.

DDGS17257 Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective September 23, 2009.

DDGS17256 Associate Director for New Media to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective September 25, 2009.

DDGS17258 taff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective September 25, 2009.

Department of Justice

DJGS00545 Senior Counsel to the Assistant Attorney General (Legal Policy). Effective September 4, 2009.

Department of Homeland Security

DMGS00786 Legislative Assistant to the Assistant Secretary for Legislative Affairs. Effective September 15, 2009.

DMGS00837 Chief of Staff to the Assistant Secretary for Health Affairs and Chief Medical Officer. Effective September 29, 2009.

Department of the Interior

DIGS00545 Assistant Director, Communications to the Director, National Park Service. Effective September 3, 2009.

DIGS01170 Special Assistant to the Director, Minerals Management Service. Effective September 8, 2009.

DIGS01173 Special Assistant to the Director, Congressional and Legislative Affairs. Effective September 17, 2009.

DIGS01171 Deputy Press Secretary/ Hispanic Outreach to the Director, Office of Communications. Effective September 22, 2009.

DIGS01174 Special Assistant to the Assistant Secretary of Land and Minerals Management. Effective September 25, 2009.

DIGS01172 Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks. Effective September 30, 2009.

Department of Agriculture

DAGS00177 Senior Advisor to the Administrator, Animal and Plant Health Inspection Service. Effective September 3, 2009.

DAGS00178 Special Assistant to the Under Secretary for Farm and Foreign Agricultural Services. Effective September 8, 2009.

DAGS00175 Senior Advisor to the Administrator, Animal and Plant Health Inspection Service. Effective September 15, 2009.

DAGS00180 Special Assistant to the Administrator, Farm Service Agency. Effective September 22, 2009.

DAGS00181 Special Assistant to the Administrator, Foreign Agricultural Service. Effective September 22, 2009.

Department of Commerce

DCGS00687 Senior Policy Advisor to the Director, Office of Policy and Strategic Planning. Effective September 16, 2009.

DCGS00189 Special Assistant to the Director, Executive Secretariat. Effective September 18, 2009.

DCGS00428 Deputy Director to the Director, Office of White House Liaison. Effective September 21, 2009.

DCGS00237 Executive Assistant to the Deputy Secretary. Effective September 23, 2009.

DCGS00380 Confidential Assistant to the Assistant Secretary for Manufacturing and Services. Effective September 23, 2009.

DCGS00386 Special Assistant to the Deputy Secretary. Effective September 23, 2009.

DCGS00689 Chief Communications Officer to the Under Secretary of Commerce of Intellectual Property for the U.S. Patent and Trademark Office. Effective September 28, 2009.

DCGS00275 Special Assistant to the Assistant Secretary for Economic Development. Effective September 30, 2009.

DCGS60291 Deputy Director of Public Affairs to the Senior Advisor and Director of Public Affairs. Effective September 30, 2009.

Department of Labor

DLGS60211 Special Assistant to the Director of Recovery for Auto Communities and Workers. Effective September 4, 2009.

DLGS60074 Special Assistant to the Deputy Assistant Secretary. Effective September 11, 2009.

DLGS60212 Special Assistant to the Director of Public Engagement. Effective September 17, 2009.

DLGS60239 Special Assistant to the Director of Recovery for Auto Communities and Workers. Effective September 17, 2009.

Department of Health and Human Services

DHGS60467 Outreach Coordinator (Office of Health Reform) to the Principal Deputy Assistant Secretary for Planning and Evaluation. Effective September 3, 2009.

DHGS60364 Senior Advisor to the Assistant Secretary for Legislation. Effective September 11, 2009.

DHGS60625 Chief Press Officer to the Principal Deputy Commissioner, Food and Drug Administration. Effective September 11, 2009.

DHGS60674 Confidential Assistant to the Assistant Secretary for Aging (Commissioner). Effective September 11, 2009.

DHGS60294 Confidential Assistant to the Commissioner, Administration for Children, Youth and Families. Effective September 17, 2009.

DHGS00491 White House Liaison for Political Personnel, Boards and Commissions. Effective September 24, 2009.

DHGS60468 Speechwriter to the Principal Deputy Assistant Secretary for Planning and Evaluation. Effective September 24, 2009.

Department of Education

DBGS00290 Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective September 8, 2009.

DBGS00596 Associate Assistant Deputy Secretary to the Assistant Deputy Secretary for Innovation and Improvement. Effective September 8, 2009.

DBGS00635 Special Assistant to the Chief of Staff. Effective September 8, 2009.

DBGS00246 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective September 18, 2009.

DBGS00081 Special Assistant to the Chief of Staff. Effective September 29, 2009.

DBGS00282 Confidential Assistant to the Assistant Deputy Secretary for Safe and Drug-Free Schools. Effective September 29, 2009.

DBGS00322 Confidential Assistant to the Assistant Deputy Secretary for Safe and Drug-Free Schools. Effective September 29, 2009.

Environmental Protection Agency

EPGS06009 Press Secretary to the Associate Administrator for Public Affairs. Effective September 2, 2009.

EPGS60081 Director of Advance to the Chief of Staff. Effective September 2, 2009.

EPGS04029 Special Assistant to the Chief of Staff. Effective September 8, 2009.

EPGS09011 Advance Specialist to the Director of Advance. Effective September 8, 2009.

EPGS06036 Supervisory Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective September 9, 2009.

Department of Veterans Affairs

DVGS60032 Director, Center for Faith Based Community Initiatives to the Secretary of Veterans Affairs. Effective September 14, 2009.

DVGS60002 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective September 18, 2009.

Department of Energy

DEGS00769 Special Assistant to the Senior Advisor. Effective September 1, 2009.

DEGS00771 Speechwriter to the Director, Office of Public Affairs. Effective September 21, 2009.

Small Business Administration

SBGS00002 Chief Information Officer to the Chief Operating Officer. Effective September 18, 2009.

General Services Administration

GSGS00087 Special Assistant to the Regional Administrator. Effective September 8, 2009.

GSGS00132 Special Assistant to the Regional Administrator. Effective September 14, 2009.

GSGS01432 Special Assistant to the Associate Administrator for Governmentwide Policy. Effective September 15, 2009.

GSGS01430 Special Assistant to the Regional Administrator. Effective September 18, 2009.

GSGS01431 Special Assistant to the Regional Administrator. Effective September 18, 2009.

GSGS60127 Associate Administrator to the Administrator for Small Business Utilization. Effective September 18, 2009.

Commission on Civil Rights

CCGS60010 Special Assistant to a Commissioner. Effective September 14, 2009.

National Credit Union Administration

CUOT01370 Senior Policy Advisor to the Chairman. Effective September 8, 2009.

Federal Maritime Commission

MCGS60043 Counsel to the Chairman. Effective September 23, 2009.

National Endowment for the Humanities

NHGS09001 Senior Advisor to the Chairman. Effective September 10, 2009.

National Mediation Board

NMGS60053 Confidential Assistant to a Board Member. Effective September 15, 2009.

NMGS60056 Confidential Assistant to a Board Member. Effective September 15, 2009.

Department of Transportation

DTGS60452 Associate Director, ITS Strategy and Technology Projects to the Chief Information Officer. Effective September 2, 2009.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–26386 Filed 11–2–09; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

DATES AND TIMES: Thursday, November 12, 2009, at 10 a.m.; and Friday, November 13, 2009, at 8:30 a.m. and 11 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 12—10:00 a.m.—Closed; November 13—8:30 a.m.—Open; November 13—11 a.m.—Closed.

Matters To Be Considered

Thursday, November 12 at 10 a.m. (Closed)

1. Financial Matters.
2. Strategic Issues.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Friday, November 13 at 8:30 a.m. (Open)

1. Call to Order and Minutes of the Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Committee Reports.
5. Consideration of Fiscal Year 2009 10K, Audited Financial Statements, and Postal Service Annual Report.
6. Consideration of Fiscal Year 2010 Integrated Financial Plan.
7. Consideration of Fiscal Year 2009 Comprehensive Statement and Annual Performance Plan.
8. Quarterly Report on Service Performance.
9. Tentative Agenda for the December 8, 2009, teleconference meeting.
10. Election of Chairman and Vice Chairman of the Board of Governors.

Friday, November 13 at 11:00 a.m. (Closed)—If Needed

1. Continuation of Thursday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–26545 Filed 10–30–09; 4:15 pm]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service: Performance Review Board Members

AGENCY: U.S. Small Business Administration.

ACTION: Notice of members for the FY 2009 Performance Review Board.

SUMMARY: Title 5 U.S.C. 4314(c)(4) requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Board (PRB). The following individuals have been designated to serve on the FY 2009 Performance Review Board for the U.S. Small Business Administration.

1. Eileen Harrington, Chair, Chief Operating Officer.
2. Jonathan Carver, Chief Financial Officer and Associate Administrator for Performance Management.
3. James Rivera, Deputy Associate Administrator for Disaster Assistance.
4. Sara Lipscomb, General Counsel.
5. Ana Ma, Chief of Staff.

Dated: October 28, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–26383 Filed 11–2–09; 8:45 am]

BILLING CODE P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Aeronautics Science and Technology Subcommittee; Committee on Technology; National Science and Technology Council

ACTION: Request for review and comment on the draft biennial update to the National Plan for Aeronautics Research and Development and Related Infrastructure.

Background: The Aeronautics Science and Technology Subcommittee (ASTS) of the National Science and Technology Council's (NSTC) Committee on Technology (COT) will post a draft of the biennial update to the National Plan for Aeronautics Research and Development and Related Infrastructure that is required by Executive Order (E.O.) 13419—National Aeronautics Research and Development—signed December 20, 2006. The biennial update draft document has been re-titled as the National Aeronautics Research and Development Plan (R&D Plan).

The draft R&D Plan continues to be guided by the National Aeronautics Research and Development Policy (Policy) that was prepared by the National Science and Technology Council and endorsed by E.O. 13419. Readers are advised that the national aeronautics R&D challenges, goals and objectives for the draft R&D Plan flow from the Principles detailed in the Policy (with the exception of Workforce and Aviation Security which are managed in different venues). For reference, E.O. 13419, the Policy, and the preceding National Plan for Aeronautics Research and Development and Related Infrastructure are available at: *http://ostp.gov/nstc/aeroplans/.*

Request for Review and Comment: E.O. 13419 and the National Aeronautics R&D Policy call for executive departments and agencies conducting aeronautics R&D to engage industry, academia, and other non-Federal stakeholders in support of government planning and performance of aeronautics R&D. The purpose of this posting is to obtain comments from individuals on the draft high-priority national aeronautics R&D challenges, goals and objectives contained in the draft R&D Plan that should be supported by the Federal Government.

Posting Date and Web Site Address: The draft biennial update of the R&D Plan will be posted on or about November 10, 2009 at: *http://www.ostp.gov/nstc/aeroplans/.*

Submission of Comments: A spreadsheet will be provided for submission of comments at: *http://www.ostp.gov/nstc/aeroplans/.* Comments must be returned on the spreadsheet in accordance with the guidance provided at: *http://www.ostp.gov/nstc/aeroplans/.* Readers are advised that comments provided after the deadline of November 17, 2009, or provided in a format other than on the prescribed spreadsheet may not be considered. Readers are reminded that comments regarding proprietary equipment, technologies, programs, and/or specific facilities may be considered as outside the scope of this request.

FOR FURTHER INFORMATION CONTACT: William Davis, National Science and Technology Council, Office of Science and Technology Policy, New Executive Office Building, Washington, DC 20502—telephone (202) 456–6012. Additional information is also available at the Office of Science and Technology Policy NSTC Web site at: *http://www.ostp.gov/nstc/aeroplans/.*

M. David Hodge,

Operations Manager, OSTP.

[FR Doc. E9–26465 Filed 11–2–09; 8:45 am]

BILLING CODE 3170–W9–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60886; File No. SR–BX–2009–067]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Effective Date of and Expand the Penny Pilot Program on the Boston Options Exchange Facility

October 27, 2009.

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 19, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 33 (Penny Pilot Program) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to (i) extend the Penny Pilot Program in options classes (''Penny Pilot Program'' or ''Pilot'') previously approved by the Securities and Exchange Commission (''Commission'') through December 31, 2010; (ii) expand the number of classes included in the Pilot; and (iii) replace on a semi-annual basis any Pilot Program classes that have been delisted. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program[5] which is currently scheduled to expire on October 31, 2009, through December 31, 2010.

Top 300

The Exchange also proposes to expand the number of classes included in the Pilot Program. Specifically, the Exchange proposes to add the top 300 most actively traded multiply listed options classes that are not yet included in the Pilot Program (''Top 300''). The Exchange proposes to determine the identity of the Top 300 based on national average daily volume in the prior six calendar months preceding their addition to the Pilot Program, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis.[6] In determining the identity of the Top 300, the Exchange will exclude options classes with high premiums. Pursuant to Chapter V, Section 33 of the BOX Rules, the Pilot Program classes will be announced to BOX Participants via Regulatory Circular and published by the Exchange on its Web site.[7] This will bring the total number of options classes quoted pursuant to the Pilot Program to 363. The Exchange represents that BOX has the necessary system capacity to support any additional series listed as part of the Pilot Program.

The Exchange believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from including such classes is minimal because of the high price of at-the-money options.[8] The Exchange believes an appropriate threshold for designation as ''high priced'' at the time of selection of new classes to be included in the Pilot is $200 per share or a calculated index value of 200. At $200 per share or a calculated index value of 200, strike prices are in $10 increments, so the ''at the money'' strike is more likely to carry an intrinsic value of $3 or more, and thus not trade in a penny increment. With a greater distance between strikes, there are fewer series that are actively traded. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Pilot. This approach is consistent with the approach the Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 60213 (July 1, 2009), 74 FR 32998 (July 9, 2009) (SR–BX–2009–032).

[6] The Exchange will not include options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. For purposes of assessing national average daily volume, the Exchange will use data compiled and disseminated by the Options Clearing Corporation.

[7] The Exchange shall also identify the classes to be added to the Pilot Program, per each phase, in a filing with the Commission.

[8] For instance, as of August 12, 2009, the near term at the money call in GOOG (August 460 Calls) was trading at $6.50 with the underlying at $459.84. The lowest strike price September call trading below $3 (with the underlying at the same price) was the September 500 Call.

taken for high-priced classes when selecting Pilot classes in the past.

Phased Implementation

The Exchange proposes to phase-in the additional classes to the Pilot Program over four successive quarters. Specifically, the Exchange proposes to add 75 classes in November 2009, February 2010, May 2010, and August 2010.[9]

Delistings

Additionally, the Exchange proposes that any Pilot Program classes that have been delisted may be replaced on a semi-annual basis by the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement classes would be added to the Pilot Program on the second trading day following January 1, 2010 and July 1, 2010.[10] The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities.

Report

The Exchange agrees to submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active options classes added to the Pilot Program.[11] As the Pilot Program matures and expands, the Exchange believes that this proposed sampling approach provides an appropriate means by which to monitor and assess the Pilot Program's impact. The Exchange will also identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing 63 Pilot Program classes. This report will include, but is not limited to: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of BOX's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[18] However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is substantially similar to a proposal submitted by another options exchange that was recently approved by the Commission and also incorporates a change to the initial expansion date filed by the other exchange. The Exchange further states that waiving the 30-day operative delay will allow the Pilot Program to continue uninterrupted and allow the Exchange to adopt the same expansion schedule as another exchange.

The Commission believes waiving the 30-day operative delay[20] is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to implement the 75 additional classes on November 2, 2009 and permit the Pilot Program to continue uninterrupted, consistent with other exchanges.[21] For those reasons, the Commission designates the proposal

[9] The Exchange is proposing that the quarterly additions would be effective on November 2, 2009, February 1, 2010, May 3, 2010 and August 2, 2010, respectively. The Exchange has proposed these specific dates based upon a proposal of NYSE Arca recently submitted to the Commission. (*See* SR–NYSEArca–2009–91). For purposes of identifying the classes to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis. For example, the quarterly additions to be added on November 2, 2009 shall be determined using data from the six month period ending September 30, 2009.

[10] The replacement classes will be announced to BOX Participants via Regulatory Circular and published by the Exchange on its Web site.

[11] The Exchange will continue to provide data concerning the existing 63 Pilot Program classes.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[21] *See* Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR–NYSEArca–2009–44); and 60833 (October 16, 2009), 74 FR 54617 (October 22, 2009) (SR–NYSEArca–2009–91).

to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–067. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2009–067 and should be submitted on or before November 24, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26357 Filed 11–2–09; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60887; File No. SR–NYSEAmex–2009–76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 70 in Order To Update d-Quote Functionality and Provide for e-Quotes To Peg to the National Best Bid or Offer

October 27, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 26, 2009, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 70 in order to (1) update d-Quote functionality and (2) provide for e-Quotes to peg to the National best bid or offer The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In this filing, the Exchange proposes (1) to amend NYSE Amex Equities Rule 70.25 to permit d-Quotes to be active when their filed prices are not at the best bid or offer, and to provide for discretionary instructions that a d-Quote will execute only if a minimum trade size (''MTS'') requirement is met, and (2) to amend NYSE Amex Equities Rule 70.26 to provide for e-Quotes and d-Quotes to peg to the National best bid or offer (''NBBO'') rather than just the Exchange best bid or offer (''BBO'').[4]

Background

Rule 70.25 governs the entry, validation, and execution of bids and offers represented electronically by a Floor broker on the Floor of the Exchange that include discretionary instructions as to size and/or price.[5] The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price range within which the e-Quote may trade and the number of shares to which the discretionary price instruction applies. D–Quote functionality is available for both displayed and reserve interest.

In particular, Rule 70.25(a) provides that d-Quotes are eligible for execution only when they are at or join the existing Exchange BBO, would establish a new Exchange BBO, or at the opening and closing transactions. Under current rules, d-Quotes at or joining the Exchange BBO may be displayed or undisplayed interest. For example, under the current rule, if the Exchange BBO were .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote bidding for .04 with four cents of price discretion would not be eligible to trade with the prevailing offer because the filed price of the d-Quote is not at the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that parallel changes are proposed to be made to the rules of the New York Stock Exchange LLC. *See* SR–NYSE–2009–106.

[5] For purposes of these rules, floor broker agency interest files (that is, electronic bids or offers from the Floor) are referred to as ''e-Quotes''. E-quotes that include discretionary instructions are referred to a ''d-Quotes''.

Exchange best bid. Accordingly, notwithstanding that the pricing instructions of the d-Quote indicate that the customer is willing to trade with the available contra-side interest, that d-Quote would not trade.

In addition, Rule 70.25(d)(ii) currently provides that, once it has been activated, a d-Quote will automatically execute against a contra-side order if the contra-side order's price is within the discretionary pricing instructions and the contra-side order's size meets any minimum or maximum size requirements that have been set for the d-Quote. Thus, for example, if the minimum size requirement for a d-Quote is 10,000 shares and an incoming contra-side order meets both the discretionary pricing instructions of the d-Quote and the 10,000 share minimum size requirement (and the d-quote is eligible for execution under Rule 70.25(a)), that incoming order will trade with the d-Quote. Notably, however, if there is other interest on the same side as the d-Quote that can trade with the incoming order, the d-Quote may in the end receive an execution that is less than its trade size minimum threshold, because the d-quote would share the execution with other executable interest at the same price pursuant to applicable parity rules.[6]

Rule 70.26 provides for the entry, validation, and execution of an e-Quote that remains available for execution at the Exchange BBO as the Exchange BBO moves. In an automated trading environment, pegging e-Quotes and d-Quotes permit Floor brokers to keep their interest in the quote, even as the quote moves. Floor brokers are able to designate a range of prices within which their e-Quotes and d-Quotes will peg and, as long as the Exchange BBO is within that range, the e-Quote and d-Quote will be included in the quote.

Proposed Amendments

D–Quotes Active When Their Filed Price Is Not at the Exchange BBO

The Exchange proposes to amend Rule 70.25(a)(ii) to provide that d-Quote instructions will not need to wait for the d-Quote's filed price to be at the Exchange BBO before they activate. By removing references to specific points when a d-Quote is active, i.e., when its filed price is or becomes the Exchange BBO, d-Quotes will be active and available to execute whenever incoming interest satisfies the discretionary instructions, without regard to the filed price of the e-Quote.[7]

For example, as proposed, if the Exchange BBO were .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote filed at a .04 bid with four cents of price discretion would be eligible to execute against the offer, notwithstanding that the d-Quote was not filed at the Exchange best bid. Similarly, if an incoming sell order at .07 were to arrive, that d-Quote would be eligible to exercise discretion to execute at .07, between the spread. Under the proposed functionality, a d-Quote could also exercise discretion in a sweep outside the Exchange BBO. For example, assuming the same Exchange BBO, a d-Quote filed at a .03 bid for 1,000 shares with one cent of price discretion will trade with an incoming large sell order that sweeps through the .05 Exchange best bid. In such case, the incoming sell order would trade first with the displayed best bid at .05 and then with any undisplayed interest at .05. It would then move to the next available price point in the sweep. Thus, for example, assume there are 1,000 shares of the incoming order remaining to sell after exhausting all interest at .05; assume also that at .04 there is displayable interest bidding for 400 shares and reserve interest bidding for 600 shares. In that case, the incoming sell order would be allocated first to the 400 shares displayable at .04. The remaining 600 shares of sell interest would then be allocated on parity between the d-Quote, exercising one cent of price discretion, and the remaining reserve interest at .04, with each participant receiving an execution of 300 shares. If there were no interest bidding at .04, the d-Quote would exercise discretion and trade at .04, thus dampening the sweep and providing price improvement to the incoming order.

The Exchange proposes to add clarifying language to Rule 70.25(a)(i) to provide that d-Quotes that exercise discretion will be considered non-displayable interest for purposes of Rule 72. The Exchange also proposes amending Rule 70.25(d)(i) (as proposed Rule 70.25(e)(i)) to provide that d-Quotes that execute between the Exchange best bid or offer will execute the largest amount of shares using the least amount of discretion necessary and that d-Quotes outside the quote will execute at their maximum discretion.

The proposed d-Quote functionality would provide Floor brokers with functionality that is similar to functionality that was previously available to Floor brokers when the New York Stock Exchange LLC (''NYSE'') operated a manual auction. In particular, in the manual market and in the NYSE's Hybrid Market, NYSE Rule 123A.30 permitted brokers to enter percentage orders with CAP (convert and parity) instructions. A subset of CAP orders, the CAP–DI order, was the elected or converted portion of a percentage order that was convertible on a destabilizing tick (the ''D'' in ''CAP–DI'') and designated for immediate execution or cancel election (the ''I'' in ''CAP–DI''). Neither CAP nor CAP–DI orders were displayed interest. When elected, a CAP–DI order would automatically execute against any contra-side volume available at the electing price and was eligible to participate in a sweep or between the spread. The CAP–DI order did not have to be at the NYSE best bid or offer before it could be elected and executed at or through the NYSE BBO.

In connection with the Next Generation Market Model, the NYSE eliminated CAP orders in part because the manner in which such orders were processed impeded the efficiency of the NYSE's Display Book® system.[8] As a consequence of the elimination of CAP orders, Floor brokers thereafter had only a limited ability to enter an order into Exchange systems that would be elected for execution at a price point other than the Exchange best bid or offer.

When it eliminated CAP orders, the NYSE did not have the technology that would permit d-Quotes to fully replicate the functionality of a CAP order. The proposed changes would now permit brokers to replicate the CAP functionality, including the ability to execute in sweeps outside the Exchange BBO or between the spread. The Exchange believes this is an important tool for brokers and will assist them in more effectively representing their customers' orders.

Separately, the Exchange notes that the proposed functionality would allow d-Quotes to interact with order types that did not exist when d-Quotes were first introduced, and which they are

[6] *See* Rule 72.

[7] The Exchange will continue to provide functionality to allow brokers to designate d-quotes that may participate on the open and the close.

[8] *See* Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46). The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

unable to easily interact with under the current rules. In particular, when d-Quote functionality was introduced in October 2006, the Exchange did not offer the ability to enter fully dark reserve interest at, outside or between the Exchange BBO. Since that time, however, the Exchange has added two new order types, the Minimum Display Reserve Order and the Non-Displayable Reserve Order.[9] Because d-Quotes currently become active only when the filed price of the d-Quote is at or becomes the Exchange best bid or offer, d-Quotes are therefore limited in their ability to interact with the type of liquidity that now trades at the Exchange. For example, if the Exchange BBO were .05 bid for 1,000 shares and 1,000 shares offered at .10, there may be reserve sell interest available at .08, which is between the spread. A d-Quote bidding .04 cents with four cents of price discretion would now be eligible to execute against that reserve interest. The d-Quote functionality proposed in this rule filing therefore would enable willing interest to trade with all willing contra-side liquidity, including reserve interest. In this way, the proposed changes will allow the brokers' tools to keep pace with the ways in which trading on the Exchange has evolved.

Minimum Trade Size (MTS) Instruction for d-Quotes

The Exchange proposes to add a new subsection to Rule 70.25 to provide that a Floor broker may include additional discretionary instructions with a d-Quote that such d-Quote will execute only if the designated MTS is met. The proposed MTS functionality for d-Quotes is similar to the approved functionality in the New York Block Exchange facility (''NYBX'').[10] Currently, d-Quotes may include instructions of a minimum size requirement that would trigger discretionary pricing, but such requirement would not guarantee a minimum execution size.

As proposed here, Floor brokers will be able to include an additional discretionary instruction that the d-Quote will not execute if the MTS is not met. For example, as proposed, if the minimum size requirement for a d-Quote is 10,000 shares and an incoming contra-side order meets both the discretionary pricing instructions of the d-Quote and the 10,000 share minimum size requirement, that incoming order will trigger the d-Quote. If the Floor broker also includes an MTS instruction of 10,000 shares and there is other competing interest on the same side as the d-Quote, that d-Quote will not execute if the d-Quote would not receive an execution of at least 10,000 shares. Therefore, if the amount of an execution that would be allocated to a d-Quote is less than the MTS quantity, the d-Quote will not be eligible to participate in the execution and will not compete with other same-side interest from other Floor brokers. Additionally, MTS instructions will not be active at the open or close.

NYSE Amex Equities Rule 70.25(a)(vi) provides that same-side d-Quotes from the same Floor broker do not compete with each other for executions allocated to that Floor broker, as they would if from different Floor brokers, when the d-Quote with the most aggressive price range executes first. The Exchange proposes to add to Rule 70.25 that when a Floor broker designates an MTS for a d-Quote, such d-Quote may compete with other same-side d-Quotes from the same Floor broker by improving the price if necessary to satisfy its MTS. For example, if a Floor broker has three d-Quotes bidding for 1,000 shares at the same price, and none of those d-Quotes has an MTS, an incoming sell order for 1,000 shares will be allocated equally to all three of the d-Quotes. In contrast, if a Floor broker has three d-Quotes bidding for 1,000 shares at the same price, and one of those d-Quotes has an MTS of 1,000 shares, an incoming sell order for 1,000 shares will be allocated in its entirety to the d-Quote with the MTS instruction if that d-Quote has a more aggressive price than the competing d-Quotes. If the d-Quote with the MTS instruction does not have a more aggressive range of discretionary price instructions than the competing d-Quotes, that d-Quote will not participate because the MTS will not be met and the incoming 1,000 share sell order will be allocated to the other two d-Quotes.

Pegging to the NBBO

The Exchange proposes to amend Rule 70.26 to provide that pegging e-Quotes and d-Quotes will now peg to the NBBO, rather than the Exchange BBO. As noted above, currently, pegging e-Quotes and d-Quotes are activated at the Exchange BBO, and move when the Exchange BBO moves. Under current rules, pegging e-Quotes and d-Quotes cannot be the sole interest at the Exchange BBO, but must peg to other non-pegging interest at the Exchange BBO. Accordingly, under current rules and functionality, pegging e-Quotes are unable to set the Exchange BBO.

The Exchange proposes that instead of pegging to the Exchange BBO, pegging e-Quotes and d-Quotes would peg to the NBBO. As a result, a pegging e-Quote or d-Quote may set the Exchange BBO, even if there is no other displayed bid or offer at the Exchange at that price. Accordingly, because such pegging e-Quotes or d-Quotes may now be the setting interest at the Exchange BBO, the Exchange proposes to amend Rule 70.26(vi) to provide that pegging e-Quotes or d-Quotes may be entitled to priority if such e-Quote or d-Quote sets the Exchange BBO. For example, if the Exchange best bid is .05, and the National best bid is .06, a pegging e-Quote will quote at the Exchange at .06, as interest pegged to the NBBO. That pegging e-Quote will therefore be the new Exchange best bid. If it is the only interest at that price when it becomes the Exchange BBO, it will be entitled to priority pursuant to Rule 72.

Except for the ability to become the Exchange BBO and be entitled to priority, as proposed, the functionality of pegging e-Quotes and d-Quotes would not otherwise change. For example, similar to the current rule, if the NBBO moves, the pegging e-Quote or d-Quote will move to follow the NBBO, provided that the NBBO is in the price range of the pegging e-Quote or d-Quote. In addition, a pegging e-Quote or d-Quote will never set the NBBO.

The Exchange believes that the proposed change to the pegging e-Quote and d-Quote functionality supports the goals of a national market system by providing additional liquidity at the NBBO and tightening spreads on the Exchange to the NBBO. This functionality therefore protects investors by aiding in the goal of executing investors' orders in the best market.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act[11] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the

[9] *See id.* In addition, to reflect that the contra-side liquidity for d-Quotes may be reserve interest that is already in Exchange systems, the Exchange proposes to change references in Rule 70.25 to ''incoming orders'' to refer instead to ''interest.''

[10] Under NYSE Rule 1600(c)(3)(B)(ii), orders entered into NYBX may include a minimum triggering volume (''MTV'') instruction. An order in NYBX with an MTV will execute only if there is contra-side interest available to meet the MTV. Similar to the proposed MTS functionality for d-Quotes, if the MTV for an NYBX order is not met, the NYBX order will not execute.

[11] 15 U.S.C. 78f(b)(5).

principles of Section 11A(a)(1)[12] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investors' orders in the best market. The Exchange believes that the updates to Floor broker functionality meet such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity. In particular, d-Quotes that are active outside the Exchange BBO provide Floor brokers with functionality to replace the now defunct CAP–DI functionality and permit d-Quotes to better participate in sweeps or to execute against reserve interest. The addition of the MTS instruction provides investors with the ability to ensure that an execution will not be fragmented and therefore will promote larger-sized executions. In addition, the Exchange believes that the proposed change to provide for e-Quotes and d-Quotes to peg to the NBBO ensures that investors' orders will be executed in the best market because more liquidity will be available at the NBBO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register.** The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–76. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–76 and should be submitted on or before November 24, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26358 Filed 11–2–09; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78k–1(a)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60888; File No. SR–NYSE–2009–106]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 70 in Order To Update d-Quote Functionality and Provide for e-Quotes To Peg to the National Best Bid or Offer

October 27, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 26, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 70 in order to (1) update d-Quote functionality and (2) provide for e-Quotes to peg to the National best bid or offer. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and http://*www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In this filing, the Exchange proposes (1) to amend NYSE Rule 70.25 to permit d-Quotes to be active when their filed prices are not at the best bid or offer, and to provide for discretionary instructions that a d-Quote will execute only if a minimum trade size (''MTS'') requirement is met, and (2) to amend NYSE Rule 70.26 to provide for e-Quotes and d-Quotes to peg to the National best bid or offer (''NBBO'') rather than just the Exchange best bid or offer (''BBO'').[4]

Background

Rule 70.25 governs the entry, validation, and execution of bids and offers represented electronically by a Floor broker on the Floor of the Exchange that include discretionary instructions as to size and/or price.[5] The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price range within which the e-Quote may trade and the number of shares to which the discretionary price instruction applies. D-Quote functionality is available for both displayed and reserve interest.

In particular, Rule 70.25(a) provides that d-Quotes are eligible for execution only when they are at or join the existing Exchange BBO, would establish a new Exchange BBO, or at the opening and closing transactions. Under current rules, d-Quotes at or joining the Exchange BBO may be displayed or undisplayed interest. For example, under the current rule, if the Exchange BBO were .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote bidding for .04 with four cents of price discretion would not be eligible to trade with the prevailing offer because the filed price of the d-Quote is not at the Exchange best bid. Accordingly, notwithstanding that the pricing instructions of the d-Quote indicate that the customer is willing to trade with the available contra-side interest, that d-Quote would not trade.

In addition, Rule 70.25(d)(ii) currently provides that, once it has been activated, a d-Quote will automatically execute against a contra-side order if the contra-side order's price is within the discretionary pricing instructions and the contra-side order's size meets any minimum or maximum size requirements that have been set for the d-Quote. Thus, for example, if the minimum size requirement for a d-Quote is 10,000 shares and an incoming contra-side order meets both the discretionary pricing instructions of the d-Quote and the 10,000 share minimum size requirement (and the d-quote is eligible for execution under Rule 70.25(a)), that incoming order will trade with the d-Quote. Notably, however, if there is other interest on the same side as the d-Quote that can trade with the incoming order, the d-Quote may in the end receive an execution that is less than its trade size minimum threshold, because the d-quote would share the execution with other executable interest at the same price pursuant to applicable parity rules.[6]

Rule 70.26 provides for the entry, validation, and execution of an e-Quote that remains available for execution at the Exchange BBO as the Exchange BBO moves. In an automated trading environment, pegging e-Quotes and d-Quotes permit Floor brokers to keep their interest in the quote, even as the quote moves. Floor brokers are able to designate a range of prices within which their e-Quotes and d-Quotes will peg and, as long as the Exchange BBO is within that range, the e-Quote and d-Quote will be included in the quote.

Proposed Amendments

D-Quotes Active When Their Filed Price Is Not at the Exchange BBO

The Exchange proposes to amend Rule 70.25(a)(ii) to provide that d-Quote instructions will not need to wait for the d-Quote's filed price to be at the Exchange BBO before they activate. By removing references to specific points when a d-Quote is active, *i.e.,* when its filed price is or becomes the Exchange BBO, d-Quotes will be active and available to execute whenever incoming interest satisfies the discretionary instructions, without regard to the filed price of the e-Quote.[7]

For example, as proposed, if the Exchange BBO were .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote filed at a .04 bid with four cents of price discretion would be eligible to execute against the offer, notwithstanding that the d-Quote was not filed at the Exchange best bid. Similarly, if an incoming sell order at .07 were to arrive, that d-Quote would be eligible to exercise discretion to execute at .07, between the spread. Under the proposed functionality, a d-Quote could also exercise discretion in a sweep outside the Exchange BBO. For example, assuming the same Exchange BBO, a d-Quote filed at a .03 bid for 1,000 shares with one cent of price discretion will trade with an incoming large sell order that sweeps through the .05 Exchange best bid. In such case, the incoming sell order would trade first with the displayed best bid at .05 and then with any undisplayed interest at .05. It would then move to the next available price point in the sweep. Thus, for example, assume there are 1,000 shares of the incoming order remaining to sell after exhausting all interest at .05; assume also that at .04 there is displayable interest bidding for 400 shares and reserve interest bidding for 600 shares. In that case, the incoming sell order would be allocated first to the 400 shares displayable at .04. The remaining 600 shares of sell interest would then be allocated on parity between the d-Quote, exercising one cent of price discretion, and the remaining reserve interest at .04, with each participant receiving an execution of 300 shares. If there were no interest bidding at .04, the d-Quote would exercise discretion and trade at .04, thus dampening the sweep and providing price improvement to the incoming order.

The Exchange proposes to add clarifying language to Rule 70.25(a)(i) to provide that d-Quotes that exercise discretion will be considered non-displayable interest for purposes of Rule 72. The Exchange also proposes amending Rule 70.25(d)(i) (as proposed Rule 70.25(e)(i)) to provide that d-Quotes that execute between the Exchange best bid or offer will execute the largest amount of shares using the least amount of discretion necessary and that d-Quotes outside the quote will execute at their maximum discretion.

The proposed d-Quote functionality would provide Floor brokers with functionality that is similar to functionality that was previously available to Floor brokers when the Exchange operated a manual auction. In particular, in the manual market and in the Exchange's Hybrid Market, Exchange Rule 123A.30 permitted brokers to enter percentage orders with CAP (convert and parity) instructions. A subset of CAP orders, the CAP–DI order, was the elected or converted portion of

[4] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR–NYSEAmex–2009–76.

[5] For purposes of these rules, floor broker agency interest files (that is, electronic bids or offers from the Floor) are referred to as ''e-Quotes''. E-quotes that include discretionary instructions are referred to a ''d-Quotes''.

[6] *See* Rule 72.

[7] The Exchange will continue to provide functionality to allow brokers to designate d-quotes that may participate on the open and the close.

a percentage order that was convertible on a destabilizing tick (the ''D'' in ''CAP–DI'') and designated for immediate execution or cancel election (the ''I'' in ''CAP–DI''). Neither CAP nor CAP–DI orders were displayed interest. When elected, a CAP–DI order would automatically execute against any contra-side volume available at the electing price and was eligible to participate in a sweep or between the spread. The CAP–DI order did not have to be at the Exchange best bid or offer before it could be elected and executed at or through the Exchange BBO.

In connection with the Next Generation Market Model, the Exchange eliminated CAP orders in part because the manner in which such orders were processed impeded the efficiency of the Exchange's Display Book® system.[8] As a consequence of the elimination of CAP orders, Floor brokers thereafter had only a limited ability to enter an order into Exchange systems that would be elected for execution at a price point other than the Exchange best bid or offer.

When it eliminated CAP orders, the Exchange did not have the technology that would permit d-Quotes to fully replicate the functionality of a CAP order. The proposed changes would now permit brokers to replicate the CAP functionality, including the ability to execute in sweeps outside the Exchange BBO or between the spread. The Exchange believes this is an important tool for brokers and will assist them in more effectively representing their customers' orders.

Separately, the Exchange notes that the proposed functionality would allow d-Quotes to interact with order types that did not exist when d-Quotes were first introduced, and which they are unable to easily interact with under the current rules. In particular, when d-Quote functionality was introduced in October 2006, the Exchange did not offer the ability to enter fully dark reserve interest at, outside or between the Exchange BBO. Since that time, however, the Exchange has added two new order types, the Minimum Display Reserve Order and the Non-Displayable Reserve Order.[9] Because d-Quotes currently become active only when the filed price of the d-Quote is at or becomes the Exchange best bid or offer, d-Quotes are therefore limited in their ability to interact with the type of liquidity that now trades at the Exchange. For example, if the Exchange BBO were .05 bid for 1,000 shares and 1,000 shares offered at .10, there may be reserve sell interest available at .08, which is between the spread. A d-Quote bidding .04 cents with four cents of price discretion would now be eligible to execute against that reserve interest. The d-Quote functionality proposed in this rule filing therefore would enable willing interest to trade with all willing contra-side liquidity, including reserve interest. In this way, the proposed changes will allow the brokers' tools to keep pace with the ways in which trading on the Exchange has evolved.

Minimum Trade Size (MTS) Instruction for d-Quotes

The Exchange proposes to add a new subsection to Rule 70.25 to provide that a Floor broker may include additional discretionary instructions with a d-Quote that such d-Quote will execute only if the designated MTS is met. The proposed MTS functionality for d-Quotes is similar to the approved functionality in the New York Block Exchange facility (''NYBX'').[10] Currently, d-Quotes may include instructions of a minimum size requirement that would trigger discretionary pricing, but such requirement would not guarantee a minimum execution size.

As proposed here, Floor brokers will be able to include an additional discretionary instruction that the d-Quote will not execute if the MTS is not met. For example, as proposed, if the minimum size requirement for a d-Quote is 10,000 shares and an incoming contra-side order meets both the discretionary pricing instructions of the d-Quote and the 10,000 share minimum size requirement, that incoming order will trigger the d-Quote. If the Floor broker also includes an MTS instruction of 10,000 shares and there is other competing interest on the same side as the d-Quote, that d-Quote will not execute if the d-Quote would not receive an execution of at least 10,000 shares. Therefore, if the amount of an execution that would be allocated to a d-Quote is less than the MTS quantity, the d-Quote will not be eligible to participate in the execution and will not compete with other same-side interest from other Floor brokers. Additionally, MTS instructions will not be active at the open or close.

NYSE Rule 70.25(a)(vi) provides that same-side d-Quotes from the same Floor broker do not compete with each other for executions allocated to that Floor broker, as they would if from different Floor brokers, when the d-Quote with the most aggressive price range executes first. The Exchange proposes to add to Rule 70.25 that when a Floor broker designates an MTS for a d-Quote, such d-Quote may compete with other same-side d-Quotes from the same Floor broker by improving the price if necessary to satisfy its MTS. For example, if a Floor broker has three d-Quotes bidding for 1,000 shares at the same price, and none of those d-Quotes has an MTS, an incoming sell order for 1,000 shares will be allocated equally to all three of the d-Quotes. In contrast, if a Floor broker has three d-Quotes bidding for 1,000 shares at the same price, and one of those d-Quotes has an MTS of 1,000 shares, an incoming sell order for 1,000 shares will be allocated in its entirety to the d-Quote with the MTS instruction if that d-Quote has a more aggressive price than the competing d-Quotes. If the d-Quote with the MTS instruction does not have a more aggressive range of discretionary price instructions than the competing d-Quotes, that d-Quote will not participate because the MTS will not be met and the incoming 1,000 share sell order will be allocated to the other two d-Quotes.

Pegging to the NBBO

The Exchange proposes to amend Rule 70.26 to provide that pegging e-Quotes and d-Quotes will now peg to the NBBO, rather than the Exchange BBO. As noted above, currently, pegging e-Quotes and d-Quotes are activated at the Exchange BBO, and move when the Exchange BBO moves. Under current rules, pegging e-Quotes and d-Quotes cannot be the sole interest at the Exchange BBO, but must peg to other non-pegging interest at the Exchange BBO. Accordingly, under current rules and functionality, pegging e-Quotes are unable to set the Exchange BBO.

The Exchange proposes that instead of pegging to the Exchange BBO, pegging e-Quotes and d-Quotes would peg to the NBBO. As a result, a pegging e-Quote or d-Quote may set the Exchange BBO, even if there is no other displayed bid or offer at the Exchange at that price.

[8] *See* Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46). The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[9] *See id.* In addition, to reflect that the contra-side liquidity for d-Quotes may be reserve interest that is already in Exchange systems, the Exchange proposes to change references in Rule 70.25 to ''incoming orders'' to refer instead to ''interest.''

[10] Under Rule 1600(c)(3)(B)(ii), orders entered into NYBX may include a minimum triggering volume (''MTV'') instruction. An order in NYBX with an MTV will execute only if there is contra-side interest available to meet the MTV. Similar to the proposed MTS functionality for d-Quotes, if the MTV for an NYBX order is not met, the NYBX order will not execute.

Accordingly, because such pegging e-Quotes or d-Quotes may now be the setting interest at the Exchange BBO, the Exchange proposes to amend Rule 70.26(vi) to provide that pegging e-Quotes or d-Quotes may be entitled to priority if such e-Quote or d-Quote sets the Exchange BBO. For example, if the Exchange best bid is .05, and the National best bid is .06, a pegging e-Quote will quote at the Exchange at .06, as interest pegged to the NBBO. That pegging e-Quote will therefore be the new Exchange best bid. If it is the only interest at that price when it becomes the Exchange BBO, it will be entitled to priority pursuant to Rule 72.

Except for the ability to become the Exchange BBO and be entitled to priority, as proposed, the functionality of pegging e-Quotes and d-Quotes would not otherwise change. For example, similar to the current rule, if the NBBO moves, the pegging e-Quote or d-Quote will move to follow the NBBO, provided that the NBBO is in the price range of the pegging e-Quote or d-Quote. In addition, a pegging e-Quote or d-Quote will never set the NBBO.

The Exchange believes that the proposed change to the pegging e-Quote and d-Quote functionality supports the goals of a national market system by providing additional liquidity at the NBBO and tightening spreads on the Exchange to the NBBO. This functionality therefore protects investors by aiding in the goal of executing investor's orders in the best market.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act [11] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [12] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that the updates to Floor broker functionality meet such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity. In particular, d-Quotes that are active outside the Exchange BBO provide Floor brokers with functionality to replace the now defunct CAP–DI functionality and permit d-Quotes to better participate in sweeps or to execute against reserve interest. The addition of the MTS instruction provides investors with the ability to ensure that an execution will not be fragmented and therefore will promote larger-sized executions. In addition, the Exchange believes that the proposed change to provide for e-Quotes and d-Quotes to peg to the NBBO ensures that investors' orders will be executed in the best market because more liquidity will be available at the NBBO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register.** The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–NYSE–2009–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–106. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–106 and should be submitted on or before November 24, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26359 Filed 11–2–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60896; File No. SR–NYSEArca–2009–98]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Relating to $1 Strikes for KBW Bank Index Options (BKX)

October 28, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 27, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5.14 Terms of Index Option Contracts in order to establish strike price intervals of $1.00 in the KBW Bank Index (''BKX''). The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is based on a filing submitted by NASDAQ OMX PHLX Inc. (''PHLX'') that was recently approved by the Commission.[4]

The purpose of the proposed rule change is designed to provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

The Exchange proposes to list series at $1.00 or greater strike price intervals for BKX, if the strike price is less than $200, and will list at least two strike prices above and two strike prices below the current value of the index at about the time a series is opened for trading on the Exchange. At the time of initial listing, the Exchange shall list strike prices for the index that are within 5 points from the closing value of the index on the preceding day.

Additional series of BKX may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the underlying Index moves substantially from the initial exercise prices or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the Index. The Exchange may also open additional strike prices that are more than 30% above or below the current Index value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market Makers trading for their own account shall not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series on BKX. In all cases, however, $1.00 strike price intervals may be listed on BKX only where the strike price is less than $200.

The Exchange shall not list LEAPS on BKX at intervals less than $2.50.

The Exchange also proposes an additional Delisting Policy for BKX. With respect to BKX, the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of BKX, and may delist series with no open interest in both the put and the call series having a: (a) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month, and (b) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the above delisting policy, customer requests to add strikes and/or maintain strikes in BKX eligible for delisting may be granted.

With regard to the impact on system capacity, NYSE Arca has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [6] in particular in that it is designed to promote just and equitable principles if trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by providing investors greater flexibility to establish positions that are better tailored to meet their investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 60840 (October 20, 2009) (order approving SR–PHLX–2009–77).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

(iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative, so that the Exchange may, for competitive reasons, list options on the KBW Bank Index at the same $1 strike price intervals currently listed by PHLX. The Commission believes such waiver is consistent with the protection of investors and the public interest.[9] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–98 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–98. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–98 and should be submitted on or before November 24, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26403 Filed 11–2–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60889; File No. SR–DTC–2009–13]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving Proposed Rule Change Relating to Municipal Bonds Redemption Process

October 27, 2009.

I. Introduction

On July 15, 2009, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On August 4, 2009, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] The Commission received two comment letters in response to the proposed rule change.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

Under this rule change, DTC will amend Part V.A. of its Operational Arrangements to redefine the time frame for an issuer or its agent of a conventional municipal bond[4] to notify DTC of a full or partial redemption or of an advance refunding of part of such outstanding bond. An issuer or its agent must notify DTC at least two business days prior to the ''Publication Date.'' Pursuant to this rule filing, Publication Date is being redefined to be ''no fewer than 20 calendar days'' (as opposed to 30 days before this rule filing) and no ''more than 60 calendar days prior to the redemption date or, in the case of an advance refunding, the date that the proceeds are deposited into escrow (and, in such cases, final notification must be received no later than 20 calendar days prior to the refunding date.)'' This new requirement will be effective November 2, 2009.

III. Comment Letters

The Commission received two comment letters in support of the proposed rule change.[5] Specifically, the Schneider letter asserted that the rule change would improve ''the timeliness of receipt and transmission of notice information regarding redemptions and refundings'' and that the new notice filing time frame provides ''issuers and their agents with adequate time to make filings that are accurate and timely as a routine matter.'' The Naser letter was similarly supportive.

IV. Discussion

The Commission finds that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 60394 (July 28, 2009), 74 FR 38677.

[3] Letters from Christeena G. Naser, American Bankers Association (Aug. 21, 2009) and Dan W. Schneider, Baker & McKenzie LLP on behalf of the Association of Global Custodians (Aug. 25, 2009).

[4] A ''conventional municipal bond'' is defined as ''a bond without any derivatives attached to it and no inherent features that would prevent a redemption announcement from being provided in a timely manner.''

[5] *Supra* note 2.

the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(A) of the Act,[6] which requires that a registered clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. As explained in the notice of the proposed rule filing,[7] DTC reviewed late redemption announcement data as it related to conventional municipal bonds and concluded that it will still have a sufficient amount of time to react to and process the redemption announcement if it were to modify the Publication Date from ''no fewer than 30 calendar days'' to ''no fewer than 20 calendar days'' prior to the redemption or advance refunding. Therefore, this rule change should not adversely affect DTC's ability to facilitate the prompt and accurate clearance and settlement of securities transactions because DTC should continue to have sufficient time to communicate details of redemptions and refundings to other securities intermediaries.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–DTC–2009–13) be and hereby is approved.[10]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26360 Filed 11–2–09; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q–1(b)(3)(A).

[7] *Supra* note 3.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6800]

Determination Pursuant to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009, Related to the Provision of Military Assistance in Support of a Southern Sudan Security Sector Transformation Program

Pursuant to the authority vested in me by the laws of the United States, including Section 7070(b)(5) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, Pub. L. 111–8), and Delegation of Authority 245–1, I hereby determine that the provision to the Government of Southern Sudan of non-lethal military assistance, military education and training, and defense services controlled under the International Traffic in Arms Regulations is in the national interest of the United States, and that such assistance may be provided pursuant to section 7070(b)(5).

This determination shall be transmitted to the Congress and published in the **Federal Register.**

Dated: October 15, 2009.

Jacob J. Lew,

Deputy Secretary of State.

[FR Doc. E9–26432 Filed 11–2–09; 8:45 am]

BILLING CODE 4710–26–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Filing of Petitions Requesting Competitive Need Limitations (CNL) Waivers for the 2009 GSP Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice affirms the previously announced deadline of November 17, 2009, for submission of petitions requesting: (1) Competitive Need Limitation (CNL) waivers; and (2) determinations regarding eligible products not produced in the United States on January 1, 1995. The list of petitions for such CNL waivers and determinations that are accepted for review, along with the date of public hearing, receipt of comments, and availability of U.S. International Trade Commission (USITC) advice, will be announced in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov*.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. 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.

Competitive Need Limitations, Including Determinations of Eligible Products Not Produced in the United States as of January 1, 1995

Section 503(c)(2)(A) of the 1974 Act sets out the two competitive need limitations (CNLs). When the President determines that a beneficiary developing country 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 ($140 million for 2009), 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 beneficiary developing country by no later than July 1 of the next calendar year.

Petitions To Waive the Competitive Needs Limitations

However, Section 503(d) of the 1974 Act sets forth the criteria under which the President may grant a waiver of the CNL for articles imported from specific beneficiary developing countries. (These limitations do not apply, by statute, either to least-developed beneficiary developing countries or AGOA beneficiary sub-Saharan African countries.) In addition, Section 503(c)(2)(E) of the 1974 Act provides that the 50-percent CNL shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

Product petitions requesting CNL waivers for GSP-eligible articles from beneficiary developing countries that exceed the CNLs in 2009 must be filed in the 2009 Annual Review by November 17, 2009, in the manner

described below. Each interested party is responsible for conducting its own review of 2009 import data to date with regard to the possible application of GSP CNLs. The USITC will make available January through September 2009 U.S. import data on November 13, 2009, on the Web site of the USITC at *http://dataweb.usitc.gov*. Any CNL exclusions will be based on full calendar-year 2009 import statistics; full calendar year 2009 data for individual tariff subheadings will be available in February 2010 on the Web site of the USITC.

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 beneficiary developing country 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. Comments on *de minimis* waivers will not be accepted at this time but are expected to be requested after publication of a separate **Federal Register** notice following the availability of full 2009 calendar-year data.

Submission of Petitions Requesting Waivers of Competitive Needs Limitations (CNLs)

Interested parties, including foreign governments, may submit petitions to waive the ''competitive need limitations'' for individual beneficiary developing countries with respect to specific GSP-eligible articles. As announced in the May 28, 2009, **Federal Register** notice, petitions requesting CNL waivers, or determinations regarding production of a like or directly competitive product in the United States on January 1, 1995, must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5:00 p.m. on Tuesday, November 17, 2009, in order to be considered in the 2009 Annual Review. Petitions submitted after the deadline will not be considered for review. Filed petitions will be available for public review on *http://www.regulations.gov/* after the November 17, 2009, deadline. The list of petitions accepted for review will be announced in the **Federal Register** at a later date.

As specified in 15 CFR 2007.1, all petitions requesting CNL waivers for GSP-eligible articles from beneficiary developing countries, or determinations regarding production of a like or directly competitive product in the United States on January 1, 1995, must include a detailed description of the product and the identification of the pertinent item number of the Harmonized Tariff Schedule of the United States (HTSUS) under which the product is classified. The HTSUS number for the relevant product should be provided at the 8-digit level. Furthermore, petitions should include on the first page of the petition the following information, in addition to identification of the ''2009 Annual GSP Review'': (1) The requested action; (2) the HTSUS 8-digit subheading in which the product is classified; and (3) the beneficiary developing country.

Petitions requesting waivers of the ''competitive need limitations'' and determinations regarding whether a like or directly competitive product was produced in the United States on January 1, 1995, must meet the relevant information requirements listed in sections 2007.1(a) of the GSP regulations. Petitions requesting waivers of the CNLs must also meet the relevant information requirements listed in section 2007.1(c) of the GSP regulations.

Procedures for Submissions

Submissions in response to this notice, with the exception of business confidential submissions, must be submitted electronically by 5 p.m., Tuesday, November 17, 2009, using *http://www.regulations.gov*, docket number USTR–2009–0037. Instructions for submitting business confidential versions are provided below. Hand-delivered submissions will not be accepted. Submissions must be submitted to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, by the applicable deadlines set forth in this notice.

To make a submission using *http://www.regulations.gov*, enter docket number USTR–2009–0037 on the home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ''Notices'' under ''Document Type''. In the results table below, click on the ''Send a Comment'' link that corresponds to this notice. Follow the instructions given on the screen to submit the comment. The *http://www.regulations.gov* website offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document. While both options are acceptable, USTR prefers submissions in the form of an attachment.

Comments must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Any person or party making a submission is strongly advised to review the GSP regulations and GSP Guidebook (available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/General_GSP_Program_Information/Section_Index.html*).

Business Confidential Submissions

Persons wishing to submit business confidential information must submit that information by electronic mail to *FR0807@ustr.eop.gov*. Business confidential submissions will not be accepted at *http://www.regulations.gov*. For any document containing business confidential information submitted as a file attached to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC.'' The ''BC'' should be followed by the name of the party (government, company, union, association, etc.) that is making the submission.

If comments contain business confidential information that the submitter wishes to protect from public disclosure, the confidential submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the submission. The submitter must include in the comments a written explanation of why the information should be protected in accordance with 15 CFR 2007.7(b).

In addition, the submission must be accompanied by a non-confidential version that is submitted to *http://www.regulations.gov*, docket number USTR–2009–0037 and indicates, with asterisks, where confidential information was redacted or deleted. The top and bottom of each page of the non-confidential version must be marked either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''.

Business confidential comments that are submitted without the required markings or that are not accompanied by a properly marked non-confidential version as set forth above may not be accepted or may be treated as public documents.

Marideth J. Sandler,

Executive Director, Generalized System of Preferences (GSP) Program and Chair, GSP Subcommittee, Office of the U.S. Trade Representative.

[FR Doc. E9–26409 Filed 11–2–09; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0111]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for the renewal of a currently approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 4, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0111, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Epstein, 202–366–2157, Office of Safety, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety Improvement Program.

OMB Control No: 2125–0025.

Background: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) amended Section 148 of Title 23 U.S.C. to establish a new ''core'' Highway Safety Improvement Program (HSIP) that provides funds to State Departments of Transportation (DOTs) to improve conditions at hazardous highway locations and hazardous railway-highway grade crossings on all public roads, including those maintained by Federal, State and local agencies. The existing provisions of Title 23 U.S.C. Sections 130, Railway-Highway Crossings Program, and 152, Hazard Elimination Program, as well as implementing regulations in 23 CFR 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31 three reports related to the conduct and effectiveness of their HSIPs, that are to include information on: (a) Progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic crashes, injuries and fatalities [Sections 148(g) and 152(g)]; (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(g)], which will be used by FHWA to produce and submit biennial reports to Congress required on April 1, beginning April 1, 2006; and (c) description of at least 5 percent of the State's highway locations exhibiting the most severe safety needs, including an estimate of the potential remedies, their costs, and impediments to their implementation other than cost for each of the locations listed (i.e., the ''5 percent report'') [Section 148(c)(1)(D)]. To be able to produce these reports, State DOTs must have crash data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, and determining the ''before'' and ''after'' crash experiences at HSIP project locations. This information provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels. Per SAFETEA–LU, State DOTs have much flexibility in the methodology they use to rank the relative severity of their public road locations in terms of fatalities and serious injuries. The list of 5 percent of these locations exhibiting the most severe safety needs will result from the ranking methodology used, and may include roadway segments and/or intersections. For example, a State may compare its roadway locations against statewide average rates of fatalities and serious injuries per 100 million vehicle miles traveled for similar type facilities and determine that those segments whose rates exceed the statewide rates are the locations with the ''most severe'' safety needs, and then at least 5 percent of those locations would be included in the required annual report.

Respondents: 51 State Transportation Departments, including the District of Columbia.

Frequency: Annually.

Estimated Average Burden per Response: 500 hours (This is an increase of 300 burden hours from the current OMB approved 200 burden hours. The new report will take an additional 300 hours plus the 200 hours for the existing two reports).

Estimated Total Annual Burden Hours: 25,500 hours (51 responses at an average of 500 hours each).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 28, 2009.

Tina Campbell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9–26371 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2009–0115]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for the renewal of a currently approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** We

are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 4, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0115, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Raj Ailaney, Office of Bridge Technology, HIBT–1, (202) 366–6749, Fax (202) 366–3077, or e-mail *Raj.Ailaney@dot.gov.* For legal questions, please contact Mr. Robert Black, Office of the Chief Counsel, (202) 366–1359, *robert.black@dot.gov;* Federal Highway Administration, Department of Transportation, Room E84–461, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Innovative Bridge Research and Deployment (IBRD) Program.

Background: The Innovative Bridge Research and Deployment (IBRD) program was established by the passage of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59 on Aug. 10, 2005. Per Section 5202(b)(1) of SAFETEA–LU, the Secretary shall establish and carry out a program to promote, demonstrate, evaluate, and document the application of innovative designs, materials, and construction methods in the construction, repair, and rehabilitation of bridges and other highway structures.

This program was funded by SAFETEA–LU, Section 5101(a)(1) at $13.1 M for each of the fiscal years 2005 through 2009. Of this amount, $4.125 M for fiscal years 2006 through 2009 was directed to conduct research and deploy technologies related to high-performance concrete bridges. The actual amount available varied in yearly congressional appropriations. For fiscal year 2008, Congress rescinded the IBRD program. Under the current Continuing Resolution, the IBRD Program is authorized and continued for FY 2010.

The IBRD activities include identification and selection of candidate projects from 50 State DOTs, Puerto Rico and the District of Columbia, which meet one or more goals of the program as established by the Congress. Projects may be selected that meet one or more program goals as follows:

A. The development of new, cost-effective, innovative highway bridge applications;

B. The development of construction techniques to increase safety and reduce construction time and traffic congestion;

C. The development of engineering design criteria for innovative products, materials, and structural systems for use in highway bridges and structures;

D. The reduction of maintenance costs and life-cycle costs of bridges, including costs of new construction, replacement or rehabilitation of deficient bridges;

E. The development of highway bridges and structures that will withstand natural disasters;

F. The documentation and wide dissemination of objective evaluations of the performance and benefits of these innovative designs, materials, and construction methods;

G. The effective transfer of resulting information and technology; and

H. The development of improved methods to detect bridge scour and economical bridge foundation designs that will withstand bridge scour.

Additional activities include collection of project information, documentation, promotion and wide dissemination of objective evaluations of the performance and benefits of these innovative designs, materials, and construction methods resulting from the project studies.

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico.

Frequency: Annual.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: It is estimated that a total of 100 responses will be received to give us a total annual burden of 100 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: October 28, 2009.

Tina Campbell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9–26370 Filed 11–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[Docket No. FRA–2009–0001–N–26]

Notice and Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2009 (74 FR 42732).

DATES: Comments must be submitted on or before December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue

two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 24, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 74 FR 42732. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

Title: ARRA Solicitation of Applications and Notice of Funds Availability for High-Speed Rail Corridors and Intercity Passenger Rail Service—Capital Assistance and Planning Grants Program.

OMB Control Number: 2130–0583.

Type of Request: Regular Approval of an Emergency Clearance.

Affected Public: 50 States and Amtrak.

Abstract: On June 23, 2009, FRA published a Notice of Funds Availability (NOFA) and Interim Guidance for the High-Speed Rail (HSR)/Intercity Passenger Rail (IPR) Grant Program. *See* 74 FR 29900. The NOFA and Interim Guidance documents and additional information about the HSR/IPR Grant Program are available on FRA's public Web site at *http://www.fra.dot.gov/us/content/2243.* FRA plans on publishing a Final Guidance shortly in the **Federal Register,** and will also then place the Final Guidance on its Web site. The HSR/IPR Grant Program builds upon President Obama's ''Vision for High-Speed Rail in America,'' which was issued on April 16, 2009, and which describes a collaborative effort among the Federal Government, States, railroads and other key stakeholder to transform America's transportation system by investing in an efficient, high-speed passenger rail network of 100 to 600 mile intercity corridors.

The Interim/Final Guidance documents detail HSR/IPR Grant Program funding opportunities as well as specific application requirements and procedures. The evaluation and selection criteria are intended to prioritize projects that deliver transportation, economic recovery and other public benefits, including energy independence, environmental quality, and livable communities; ensure project success through effective program management, financial planning and stakeholder commitments; and emphasize a balanced approach to project types, locations, innovation, and timing. The program grant funds are being made available under the American Recovery and Reinvestment Act of 2009 (ARRA) and the Department of Transportation Appropriations Act of fiscal years 2008 and 2009. ARRA established the HSRIPR Program—a new program that provides $8 billion to support the Administration's vision for developing high-speed rail in America.

Form Number(s): FRA F 6180.132; FRA F 6180.133; FRA F 6180.134; FRA F 6180.135; FRA F 6180.138; FRA F 6180.139; SF–424; SF–424A; SF–424C; SF–424D; SF–LLL.

Annual Estimated Burden Hours: 47,450 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on October 28, 2009.

Kimberly Coronel,

Director, Office of Financial Management,

Federal Railroad Administration.

[FR Doc. E9–26445 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35237]

City of Davenport, IA—Construction and Operation Exemption—in Scott County, IA

AGENCY: Surface Transportation Board, DOT.

ACTION: Change of title to the Notice of Availability of the Environmental Assessment.

SUMMARY: This document contains a change to the title of the Notice of Availability of the Environmental Assessment served and published in the **Federal Register** on Monday, October 26, 2009 (74 FR 55085) by the Board's Section of Environmental Analysis. That notice, published in this docket, was titled ''Eastern Iowa Industrial Center Rail Project—Construction and Operation Exemption—City of Davenport, Iowa.'' The title should read, ''City of Davenport, IA—Construction and Operation Exemption—in Scott County, IA.''

FOR FURTHER INFORMATION, CONTACT: Christa Dean, (202) 245–0299. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: On October 26, 2009, the Board served a Notice of Availability of the Environmental Assessment in this docket. The notice is related to a petition filed on July 21, 2009, by the City of Davenport, IA, seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct [1] approximately 2.8 miles of rail line in Scott County, IA. The Board instituted a proceeding in this matter under 49 U.S.C. 10502(b) by decision served October 19, 2009.

Decided: October 28, 2009.

[1] In an amendment filed on September 8, 2009, the City clarified that it also seeks operation authority.

By the Board, Anne K. Quinlan, Acting Secretary.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–26364 Filed 11–2–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35293]

Pinsly Railroad Company—Control Exemption—Warren & Saline River Railroad Company

By petition filed on September 9, 2009, Pinsly Railroad Company (PRC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 to acquire control of Warren & Saline River Railroad Company (WSR) through the purchase of all WSR stock from Potlatch Land & Lumber, LLC (PLL). PRC seeks expedited action of this petition.[1] The Board will grant the exemption and the request for expedited action.

Background

PRC is a noncarrier holding company that currently controls five Class III rail carriers.[2] WSR is a Class III rail carrier, and wholly-owned subsidiary of PLL, which owns and operates approximately 5 route miles of rail line extending south and west from Warren, AR. PLL is the only active shipper on the WSR line. PRC states that AKMD leases and operates a rail line that connects with WSR at Warren.

PRC states that it executed a Stock Purchase Agreement with PLL on September 4, 2009, to acquire all of WSR's stock and assume control of WSR.[3] Following consummation, PRC plans to coordinate the rail operations of WSR and AKMD, with service continuing 5 days per week as traffic warrants. PRC seeks expedited consideration of the petition so that it can concurrently finalize its acquisition of WSR and PNW no later than December 30, 2009.

In support of its petition, PRC states that no shipper will lose rail service or any existing competitive options as a result of the proposed transaction. PRC also states that all WSR traffic, which currently moves over AKMD's line out of Warren, will continue to do so after PRC assumes control of WSR. Finally, PRC states that it, along with AKMD, will provide administrative and other support for WSR's operations when WSR and AKMD become affiliated carriers.

Discussion and Conclusions

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. 11323(a)(5). Under 49 U.S.C. 10502(a), however, the Board must exempt a transaction or service from regulation if it finds that: (1) Regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is limited in scope; or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 11323–25 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323–25 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction, promoting a safe and efficient rail transportation system, ensuring that a sound rail transportation system will continue to meet the needs of the shipping public, and reducing regulatory barriers to entry [49 U.S.C. 10101(2), (3), (4), and (7)]. Also, by allowing PRC to integrate WSR into its existing family of Class III carriers, with attendant experience, resources, capital, and administrative support, an exemption will foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers, and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from an abuse of market power. PRC has indicated that there will be no adverse impacts on rail transportation or lessening of rail competition. PRC will simply be incorporating WSR into its family of short line carriers without materially changing the operations of WSR. As a result, shippers potentially will benefit from greater efficiencies while receiving the same service. No shipper located on WSR's line is expected to lose rail service options as a result of the control transaction. The more likely result will be enhanced rail service, as shippers will benefit from the substantial experience and resources of PRC and from the connection between WSR and the other PRC-controlled carriers. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III rail carriers.

The acquisition of control is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

In this proceeding, PRC has requested expedited handling of its petition to enable it to consummate the acquisition of control of WSR in conjunction with its acquisition of another Class III carrier, PNW, in a separate proceeding. PRC has requested that its acquisition of WSR become effective no later than December 30, 2009. PRC's authority to acquire PNW became effective on October 9, 2009. PRC's request is reasonable in light of the fact that the acquisition of the two Class III carriers was finalized under a single Stock Purchase Agreement. PRC's request for expedited action will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval

[1] PRC concurrently filed a verified notice of exemption in *Pinsly Railroad Company—Control Exemption—The Prescott and Northwestern Railroad Company,* STB Finance Docket No. 35292 (STB served Sept. 25, 2009), to obtain control of The Prescott and Northwestern Railroad Company (PNW), a Class III rail carrier, through the purchase of all PNW's stock from PLL. That exemption became effective on October 9, 2009.

[2] These carriers are: Pioneer Valley Railroad Company, Inc. (PVR), which operates in Massachusetts; Florida Central Railroad Company, Inc. (FCR), Florida Midland Railroad Company, Inc. (FMR), and Florida Northern Railroad Company, Inc. (FNR), each of which operates in Florida; and Arkansas Midland Railroad Company, Inc. (AKMD), which operates several disconnected line segments in Arkansas.

[3] PRC has concurrently filed a motion for protective order pursuant to 49 CFR 1104.14(b) in STB Finance Docket No. 35292 to allow PRC to file the unredacted Stock Purchase Agreement under seal. The motion was addressed in a separate decision served on October 6, 2009.

requirements of 49 U.S.C. 11323–25 PRC's acquisition of control of WSR.

2. PRC's request for expedited action is granted.

3. Notice will be published in the **Federal Register** on November 3, 2009.

4. This exemption will be effective on December 3, 2009. Petitions to stay must be filed by November 13, 2009. Petitions to reopen must be filed by November 23, 2009.

By the Board, Chairman Elliot, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–26396 Filed 11–2–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2009–0106]

Express Lanes Demonstration Program—Performance Goals for the Texas Department of Transportation Express Lanes IH–30 and IH–35E Express Lanes Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: Section 1604(b)(7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; Aug. 10, 2005), authorizes the Secretary of Transportation (Secretary) to develop and publish performance goals for each express lane project accepted under the Express Lanes Demonstration Program. This notice lists the Performance Goals, Monitoring and Reporting Program requirements for the IH–30 (the Tom Landry Freeway) Express Lanes project and IH–35E Express Lanes project in Dallas in the State of Texas.

DATES: Comments must be received on or before December 3, 2009.

ADDRESSES: Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov*, or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Mr. Wayne Berman, Office of Operations, (202) 366–4069, (*Wayne.Berman@dot.gov*); for legal questions contact Mr. Michael Harkins, Attorney Advisor, Office of the Chief Counsel, (202) 366–4928, (*Michael.Harkins@dot.gov*). The FHWA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 1604(b) of SAFETEA–LU, established the Express Lanes Demonstration Program (ELDP). Under the ELDP, the Secretary must carry out 15 demonstration projects during the period of fiscal years 2005 through 2009 to permit States to collect a toll from motor vehicles at eligible facilities. On May 28, 2009, the Texas Department of Transportation (TxDOT) submitted applications to the FHWA for tolling authority under the ELDP for the IH–30 (Tom Landry Freeway) Express Lanes project and the IH–35E Express Lanes Project, both in the Dallas metropolitan region. After review and analysis, both applications were approved on July 1, 2009.

The IH–30 Express Lanes project corridor is comprised of the segments of I–30W from the Tarrant County line (to Bairds Farm Road/Legends Way) to the Dallas Central Business District (to I–35E). The project includes mobility improvements on approximately 17 miles and will ultimately feature reversible managed lanes for the entire length of the Corridor. The existing IH–30 is an intermittent three-to-five-lane section of operating freeway with segments that include additional complementary auxiliary lane sections to improve operations. The fully reconstructed Corridor will retain at least the same number of existing continuous toll-free general purpose lanes, will add tolled managed lanes along certain segments, and will provide additional mobility improvements. The managed lanes will allow an alternate choice for users to select a priced option to minimize and guarantee their trip time along the corridor.

The IH–35E Express Lanes Project corridor is comprised of three segments of I–35E from I–635 in Dallas County to north of US 380 in Denton County. The project includes mobility improvements on just over 28 miles and will feature two to four managed lanes (one to two lanes each way) for the entire corridor length. The project corridor will retain the same number of toll-free general purpose lanes that currently exist and will add tolled managed lanes. The managed lanes will allow an alternate choice for users to select a priced option to minimize and guarantee their trip time along the corridor.

Pursuant to section 1604(b)(7) of SAFETEA–LU, the Secretary, in cooperation with the State, public authority, private entity, and other program participants must develop performance goals for each project and publish such goals for public comment. This notice lists, and solicits public comment on, the Performance Goals, Monitoring and Reporting Programs for the IH–30 and the IH–35E Express Lanes Projects.

Performance Goals, Monitoring and Reporting Program

The following describes the agreed upon ELDP's Performance Goals, Monitoring and Reporting Program for the IH–30 and the IH–35E Express Lanes Projects. This program has been developed cooperatively between TxDOT and FHWA.

A. Performance Goals

The FHWA and TxDOT have identified the following four Performance Goals for the project. These Performance Goals reflect the priorities for the project at the State and local levels. The Performance Goals also reflect the goals of the Express Lanes Demonstration Project set forth in Federal law at SAFETEA–LU section 1604(b).

I. Effects on travel, traffic, and air quality.

II. Distribution of benefits and burdens.

III. Use of alternative transportation modes.

IV. Use of revenues to meet transportation or impact mitigation needs.

B. Core Performance Measures

The following Core Performance Measures will be utilized to focus the monitoring and reporting work undertaken to evaluate facility performance. The Performance Goals for which each Core Performance Measure will provide relevant information are indicated in parentheses. Specific reporting items for each Core Performance Measure are listed immediately below it.

Generally, facility performance will be assessed by reference to baseline values or trends for the reported items under the Core Performance Measures. The methodology for determining each baseline value or trend will be explained in detail in the Performance Monitoring and Evaluation Manual described below.

1. Travel-Time Reliability, Volume, Speed, and Incidents in Priced Lanes (I, II, III)

- Report percentage of time that the managed lanes are operating at a minimum average speed of 50 miles per hour, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods.
- Report 95th and 80th percentile travel times for the managed lanes, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods. (The 95th percentile represents the slowest traffic day each month. The 80th percentile represents the slowest traffic day each week.) This measure is reported in minutes.
- Report the Buffer Index calculated to demonstrate performance in the managed lanes, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods. The Buffer Index is the extra time that travelers must add to their average travel time when planning trips to ensure on-time arrival. (For example, a buffer index of 40 percent means that for a trip that usually takes 20 minutes a traveler should budget an additional 8 minutes to ensure on-time arrival most of the time. The 8 extra minutes is called the buffer time. Therefore, the traveler should allow 28 minutes for the trip in order to ensure on-time arrival 95 percent of the time.)
- Report traffic volumes and traffic volume changes on a total and percentage-change basis annually, broken into daily averages, for daily total, by a.m. peak, off-peak, and p.m. peak for the managed lanes by direction.
- Report traffic speeds and traffic speed differences from the previous year (on a total and percentage-change basis) annually, broken into daily averages, for daily total, by a.m. peak, off-peak, and p.m. peak for the managed lanes by direction.
- If reasonably available from data sources; verify, validate, reconcile, catalogue, identify, and report actual number of incidents, and identify the effect on lane availability for the managed lanes during this time, including the length of time each such lane was unavailable.
- Report on the speed and travel time differential between the general purpose lanes and the managed lanes, broken into daily averages, for daily total, by a.m. peak, off-peak, and p.m. peak.
- Report on managed lane availability as a percentage of time the lane is available for operations, broken into daily averages, by a.m. peak and p.m. peak for managed lanes. This could include weather, maintenance, problems with operations, opening procedures, or special events that could affect the lane availability.

2. Changes in Mode Split/Ridership/Vehicle Occupancies of Priced vs. General Purpose Lanes (I, II, III)

- Report number of declared High Occupancy Vehicles (HOV)s for the year and differences from the previous year (on a total and percentage-change basis), broken into daily averages, by a.m. peak and p.m. peak for managed lanes.
- Report number of buses (i.e. registered non-revenue accounts) for the year and differences from the previous year (on a total and percentage-change basis), broken into daily averages, by a.m. peak, off-peak, and p.m. peak for managed lanes.
- Report average toll charged for the year and differences from the previous year (on a total and percentage-change basis) by vehicle type, broken into daily averages, by a.m. peak, off-peak, and p.m. peak for managed lanes.
- If reasonably available, report ridership volumes for the year and differences from the previous year (on a total and percentage-change basis) by vehicle type; Single Occupancy Vehicle (SOV), HOV2+, HOV3+, Bus, Van Pool and Other, broken into daily averages by a.m. peak, off-peak, and p.m. peak for the general purpose lanes, managed lanes, and parallel access roads as applicable.
- Report on the amount of vehicle miles traveled for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type; SOV, HOV2+, HOV3+, Bus, Van Pool and Other, broken into daily averages by a.m. peak, off-peak, and p.m. peak on the managed lanes.
- If reasonably available, report on violation rates for (1) unauthorized users on the lane, (2) invalid tag/license plate on vehicle, or (3) SOV trying to use the lane at the HOV rate, broken into daily averages by a.m. peak, off-peak, and p.m. peak for the managed lanes.
- Report Metropolitan Planning Organization rideshare payments, HOV subsidy, and other disbursements.

3. Transit Schedule Adherence (II, III)

- To the extent the information is reasonably available, report on transit service reliability—percentage of on-time performance of transit service.
- To the extent the information is reasonably available, report on any existing bus transit routes or sanctioned van-pool accounts utilizing the corridor in advance of opening the project for tolling. This is to be used as a benchmark for added bus transit routes or sanctioned van-pool accounts utilizing the corridor after tolling begins.

4. Application of Revenue Reinvestment (II, IV)

- Report breakdown of the use of revenues.
- Report percentage of revenue used to mitigate impacts.

5. Change in Criteria Pollutant Emissions for the Region (I)

- Report on the concentrations of six criteria pollutants (particle pollution, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead) during the current year and differences from the previous year (on a total and percentage-change basis) utilizing reasonably available and reliable air quality reporting tools and mechanisms.
- Utilize the results of the core performance sub-elements B.I(a) (Travel-time reliability in tolled lanes) and B.III(a) (Changes in mode split/ridership/vehicle occupancies of tolled vs. general purpose lanes) to the extent possible to assist in utilizing the North Central Texas Council of Governments' air quality modeling tools and mechanisms to demonstrate any reductions in criteria pollutant emissions.

C. Monitoring and Reporting Program

I. Performance Monitoring and Evaluation Manual

Prior to commencement of pricing operations on the facility, TxDOT will prepare a Performance Monitoring and

Evaluation Manual document that will describe the information to be collected, the methodology for identifying baseline values and, the approach for developing the annual reports that assess facility performance. It will serve as a tool to facilitate achievement of the performance goals identified in Part A by documenting the program for regular monitoring and reporting to be utilized in the assessment of the Core Performance Measures identified in Part B.

The Performance Monitoring and Evaluation Manual will be in the form of an instruction manual, and should address the following subject areas.

1. Project Overview.
2. Purpose and Need.
3. Organization of Document.
4. Overview of Project Goals.
5. Overview of Core Performance Measures.
   a. Key Questions and definition of Core Performance Measures.
   b. Description of how specific reported information relates to Core Performance Measures and Performance Goals.
6. Methodology for Determining Baseline Measurements.
7. Annual Monitoring Program Measurement Processes and Procedures.
8. Coordination with other Transportation Providers.
9. Reference Documentation Listing as Applicable.

II. Monitoring and Reporting Annual Report

The annual monitoring and reporting program measurement processes and procedures will be documented in an annual report that shall include the following sections.

1. Project Information.
2. Performance Highlights.
3. Performance Summary.
4. Performance Details.

D. Timeline and Process for Submission of ELDP Monitoring Report

The annual reporting period for the Express Lanes Demonstration Program is between January 1 and December 31 of each year. Data collected and reported will align with this time period. The first year's data after tolling commences will be data collected from the date of service commencement to December 31 of that year.

The TxDOT's submission to FHWA of the Monitoring and Reporting Annual Report will occur no later than March 31 of each year.

Authority: Section 1604(b)(7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; Aug. 10, 2005).

Issued on: October 23, 2009.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. E9–26406 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2009–0107]

Express Lanes Demonstration Program—Performance Goals for the Florida Department of Transportation I–595 Express Lanes Project

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: Section 1604(b)(7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; Aug. 10, 2005), authorizes the Secretary of Transportation (Secretary) to develop and publish performance goals for each express lane project accepted under the Express Lanes Demonstration Program. This notice lists the Performance Goals, Monitoring and Reporting Program requirements for the I–595 Express Lanes project in Fort Lauderdale, in Broward County, in the State of Florida.

DATES: Comments must be received on or before December 3, 2009.

ADDRESSES: Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov,* or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Mr. Wayne Berman, Office of Operations, (202) 366–4069, (*Wayne.Berman@dot.gov*); for legal questions contact Mr. Michael Harkins, Attorney Advisor, Office of the Chief Counsel, (202) 366–4928, (*Michael.Harkins@dot.gov*). The FHWA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Section 1604(b) of SAFETEA–LU, established the Express Lanes Demonstration Program (ELDP). Under the ELDP, the Secretary must carry out 15 demonstration projects during the period of fiscal years 2005 through 2009 to permit States to collect a toll from motor vehicles at eligible facilities. On June 11, 2009, the Florida Department of Transportation (FDOT) submitted applications to the FHWA for tolling authority under the ELDP for the I–595 Express Lanes project in the Fort Lauderdale region of Broward County. After review and analysis, the application was approved on July 1, 2009.

The I–595 Express Lanes will consist of three reversible tolled lanes in the median of I–595 in Broward County, Florida. There are four proposed exchange points within the limits of the I–595 Express Lanes (approximately 10.5 miles in length). The western ingress/egress point is proposed west of Flamingo Road, serving I–75 and Sawgrass Expressway. The eastern location is proposed between Florida's Turnpike and US 441, serving points east of US 441 including I–95. The southern location is proposed along Florida's Turnpike between I–595 and Griffin Road. Finally, the northern location is proposed along Florida's Turnpike between Peters Road and I–595. The eastbound and westbound I–595 general purpose lanes will remain toll-free.

Pursuant to section 1604(b)(7) of SAFETEA–LU, the Secretary, in cooperation with the State, public authority, private entity, and other program participants must develop performance goals for each project and

publish such goals for public comment. This notice lists, and solicits public comment on, the Performance Goals, Monitoring and Reporting Programs for the I–595 Express Lanes Project.

Performance Goals, Monitoring and Reporting Program

The following describes the agreed upon ELDP's Performance Goals, Monitoring and Reporting Program for the I–595 Express Lanes Project. This program has been developed cooperatively between FDOT and FHWA.

Performance Goals, Monitoring and Reporting Program

Section 1: Performance Goals

The FHWA and FDOT have identified the following performance goals (''Performance Goals'') for the I–595 Express Lanes. These Performance Goals reflect the priorities for the I–595 Express Lanes at the State and local levels. The Performance Goals also reflect the goals set forth for the ELDP in Section 1604(b) of SAFETEA–LU.

I. Effects on travel, traffic, and air quality.

II. Balance distribution of benefits and burdens among facility users.

III. Introduce and increase use of alternative transportation modes.

IV. Use of revenues to meet transportation or impact mitigation needs.

Section 2: Measuring, Monitoring and Reporting on Achievement of Performance Goals

Section 2.1: Performance Measures

The following core performance measures (''Core Performance Measures'') will be utilized to focus the monitoring and reporting work undertaken to evaluate performance of the I–595 Express Lanes. The one or more Performance Goals to which each Core Performance Measure corresponds are indicated in parenthesis. Specific reporting items for each Core Performance Measure are listed below.

Generally, Express Lane performance will be assessed by reference to baseline values or trends for the reported items under the Core Performance Measures. The methodology for determining each baseline value or trend will be explained in detail in the *Performance Monitoring and Evaluation Manual* described below.

A. Travel-Time Reliability in I–595 Express Lanes vs. General Purpose Lanes (I, II, III)

i. Report percentage of time that the I–595 Express Lanes are operating at a minimum average speed of 50 miles per hour, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods.

ii. Report 95th percentile travel times for the I–595 Express Lanes and general purpose lanes, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods. This measure is reported in minutes. (The 95th percentile represents the slowest traffic day each month).

iii. Report the Buffer Index calculated to demonstrate performance in the I–595 Express Lanes and general purpose lanes, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods. (The Buffer Index is the extra time that travelers must add to their average travel time when planning trips to ensure on-time arrival. For example, a buffer index of 40 percent means that for a trip that usually takes 20 minutes a traveler should budget an additional 8 minutes to ensure on-time arrival. The 8 extra minutes is called the buffer time. Therefore, the traveler should allow 28 minutes for the trip in order to ensure on-time arrival 95 percent of the time.)

iv. Report traffic volumes and traffic volume changes on a total and percentage-change basis annually, broken into daily averages, for daily total, by a.m. peak, off-peak, and p.m. peak for the I–595 Express Lanes and general purpose lanes by direction.

v. Report traffic speeds and traffic speed differences from the previous year (on a total and percentage-change basis) annually, broken into daily averages, for daily total, by a.m. peak, off-peak, and p.m. peak for the I–595 Express Lanes and general purpose lanes by direction.

vi. Report actual number of incidents and identify the effect on lane availability for the I–595 Express Lanes during this time, including the length of time each such lane was unavailable.

B. Changes in Mode Split/Ridership/Vehicle Occupancies of I–595 Express Lanes vs. General Purpose Lanes (I, II, III)

i. Report volumes by vehicle type for the year and the differences from the previous year (on a total and percentage-change basis), broken into daily averages, by a.m. peak, off-peak, and p.m. peak for the I–595 Express Lanes and the general purpose lanes, as applicable and reasonably available. Express Lane vehicle classifications are: registered carpools, registered buses, registered Inherently Low Emissions Vehicles (ILEV) and hybrid vehicles (as defined in Section 316.0741 Florida Statutes), registered vanpools, and toll-paying customers.

ii. Report average toll charged for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type, broken into daily averages, by a.m. peak, off-peak, and p.m. peak for the I–595 Express Lanes.

iii. If reasonably available, report on the amount of vehicle miles traveled by vehicle type for the year and differences from the previous year (on a total and percentage-change basis). I–595 Express Lanes vehicle classifications are: registered carpools, registered buses, registered ILEV and hybrid vehicles (as defined in Section 316.0741 Florida Statutes), registered vanpools, and toll-paying customers.

C. Transit Schedule Adherence on the I–595 Express Lanes (II, III)

To the extent the information is reasonably available, report on express transit service reliability (percentage of on-time performance of transit service) on express bus transit routes utilizing the I–595 Express Lanes. When reporting on the express bus routes, measurements of ridership, travel time, and reliability should be included.

D. Application of Toll Revenue Reinvestment (II, IV)

Report breakdown of the use of revenues.

E. Change in Criteria Pollutant Emissions for the Region (I)

Report on the concentrations of six criteria pollutants (particle pollution, ground level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead) during the current year and differences from the previous year (on a total and percentage-change basis) utilizing reasonably available and reliable air quality information gathered by Broward County.

Section 2.2. Monitoring and Reporting Program

Prior to commencement of pricing operations on the I–595 Express Lanes, FDOT will prepare a *Performance Monitoring and Evaluation Manual* document that will describe the information to be collected, the methodology for identifying baseline values, and approach for developing the annual reports that assess Express Lane performance. The manual will serve as a tool to facilitate achievement of the Performance Goals identified in Section E(6) by documenting the program for regular monitoring and reporting to be utilized in the assessment of the Core Performance Measures identified in this Section E(7).

The *Performance Monitoring and Evaluation Manual* will be in the form

of an instruction manual and should address the following subject areas.

A. Project Overview
B. Purpose and Need
C. Organization of Document
D. Overview of Project Goals
E. Overview of Core Performance Measures
  i. Key Questions and definition of Core Performance Measures
  ii. Description of how specific reported information relates to Core performance Measures and Performance Goals
F. Methodology for Determining Baseline Measurements
G. Annual Monitoring Program Measurement Processes and Procedures
H. Coordination with other Transportation Providers
I. Reference Documentation Listing (as applicable)

The annual monitoring and reporting program measurement processes and procedures will be documented in the *Monitoring and Reporting Annual Report* that should include the following sections.

A. Project Information
B. Performance Highlights
C. Performance Summary
D. Performance Details

Section 2.3. Timeline and Process for Submission of ELDP Monitoring Report

The annual reporting period for the ELDP is between January 1 and December 31 of each year. Data collected and reported will align with this time period. The first year's data after tolling commences will be data collected from the date of service commencement to December 31 of that year. FDOT's submission to FHWA of the *Monitoring and Reporting Annual Report* will occur no later than March 31 of each year.

Authority: Section 1604(b)(7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; Aug. 10, 2005).

Issued on: October 23, 2009.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. E9–26404 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Informational Filing

For informational purposes only, the Federal Railroad Administration (FRA) is providing notice that it has received an informational filing from BNSF Railway Company (BNSF) and the National Railroad Passenger Corporation (Amtrak) to conduct joint testing of Version V of BNSF's Electronic Train Management System (ETMS) submitted pursuant to Title 49 Code of Federal Regulations 236.913. The informational filing is described below, including the submitting party and the requisite docket number where the informational filing and any related information may be found. The document is available for public inspection; however, FRA is not accepting public comment on the document.

BNSF Railway Company; National Railroad Passenger Corporation

[Docket Number FRA–2006–23687]

BNSF and Amtrak have submitted an informational filing to FRA to begin joint operational testing of ETMS Version V on BNSF's Fort Worth, Red Rock, and Stampede Subdivisions. This joint testing will allow BNSF to obtain the necessary assessments required to amend its currently approved Product Safety Plan for ETMS Version I for a future submittal to the FRA. In addition, this joint testing will allow BNSF and Amtrak to substantiate the ETMS system with mixed freight and passenger operations, and on mountain grade territories. The informational filing has been placed in Docket Number FRA–2006–23687 and is available for public inspection.

Interested parties are invited to review the informational filing and associated documents at the DOT Docket Management facility during regular business hours (9 a.m.–5 p.m.) at 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the internet at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications received into any of our dockets by name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or at *http://www.dot.gov/privacy.html*.

Issued in Washington, DC, on October 26, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–26434 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18898]

Comprehensive Safety Analysis 2010 Initiative

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of public webinars.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces two public webinars to inform interested parties of the Agency's Comprehensive Safety Analysis 2010 (CSA 2010) initiative. CSA 2010 is a comprehensive review, analysis, and restructuring of FMCSA's current compliance and enforcement program. FMCSA will use the webinars to brief participants on the direction and progress of CSA 2010, and obtain feedback and answer questions from its stakeholders. FMCSA will also provide motor carriers, drivers and other stakeholders with information on what changes will occur with the implementation of CSA 2010, and how best to prepare for those changes.

DATES: The public webinars will be held on December 3, 2009, and December 10, 2009, at 3:30 p.m. EST. Registration information is explained in the **SUPPLEMENTARY INFORMATION** section of this notice. Written comments regarding the webinar must be received by January 31, 2010. Comments received after that date will be considered to the extent possible.

ADDRESSES: You may submit comments identified by Federal Docket Management System Docket ID Number FMCSA–2004–18898 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

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

Hand Delivery: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Fax: 1–202–493–2251.

Each submission must include the Agency name, FMCSA, and the Docket No. referenced above. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time, or Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.).

You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://docketsinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Tamara Johnson, Program Assistant, CSA 2010, (202) 366–6621.

SUPPLEMENTARY INFORMATION: Format and Agenda of Listening Session: During the public webinars, FMCSA will provide the following:

Thursday, December 3, 2009, at 3:30 p.m. EST, Webinar—Part 1: CSA 2010 Overview and Operational Model Test Results. This webinar will focus on describing the three main components of CSA 2010 and the operational model test, including quantitative and qualitative results to date. In February 2008, FMCSA began testing the new CSA 2010 operational model in four States, CO, GA, MO, and NJ, and has since added four additional states, KS, MD, MN, and MT. This test is designed to validate the efficiency and effectiveness of the CSA 2010 operational model.

Thursday, December 10, 2009, at 3:30 p.m. EST, Webinar—Part 2: CSA 2010 from a Motor Carrier and Driver Perspective. This webinar will focus on program implementation, and is designed to provide motor carriers, drivers, and other stakeholders with specific information on what will change and how stakeholders can prepare for CSA 2010 implementation.

Each webinar will consist of a presentation delivered by FMCSA personnel, followed by a facilitated panel discussion. Participants in the panel will include CSA 2010 subject matter experts, operational model test participants, field staff, and State law enforcement personnel. The participants will discuss their knowledge and experience in conducting the CSA 2010 operational model test, identify best practices, and provide guidance for implementation. Each 90-minute webinar will be divided into two 45-minute segments. The first segment will be used to present information to participants and for the panel discussion. The second segment will be used for questions and answers.

Participants should submit questions to be addressed during the webinars with their registration form. In addition, participants will be able to submit questions during the webinars. CSA 2010 subject matter experts will be available during the listening sessions to address questions and comments.

Registration information and instructions:

1. To register for the webinars, attendees must register online at *http://csa2010.fmcsa.dot.gov* by November 30, 2009.

2. After registration, participants will receive the specific Internet address (uniform resource locator, URL) and access information for the webinars. Information from the CSA 2010 public webinars will be posted on the Agency's public Web site at *http://csa2010.fmcsa.dot.gov* and in the docket after the webinars.

Background

In August 2004, FMCSA embarked on CSA 2010, a comprehensive review and analysis of FMCSA's motor vehicle safety compliance and enforcement program (69 FR 51748, August 20, 2004). The ultimate goal of CSA 2010 is to achieve a greater reduction in large truck and bus crashes, injuries, and fatalities while making efficient and effective use of the resources of FMCSA and its State partners. CSA 2010 will help the Agency assess the safety performance of a greater segment of the motor carrier industry and intervene with more carriers and drivers to change unsafe behavior early. In contrast to the Agency's current operational model, CSA 2010 is characterized by (1) a more comprehensive safety measurement system; (2) a broader array of interventions; and (3) upon adoption of a final rule, a safety fitness determination methodology that is based on performance data rather than an on-site compliance review. FMCSA has made significant progress in its development and testing of the CSA 2010 operational model, and is preparing for implementation in 2010. For more information on CSA 2010, including its major components, implementation plans, and the field test, visit *http://csa2010.fmcsa.dot.gov*.

FMCSA understands how important it is to obtain feedback on this new CSA 2010 compliance and enforcement program from partners, stakeholders, and other interested parties. The Agency conducted nine listening sessions to date, six in 2004, and one each in 2006, 2007 and 2008. Through these listening sessions, FMCSA provided information and obtained feedback on: (1) Ways the Agency could improve its process of monitoring and assessing motor carrier industry safety performance, (2) the design and development of CSA 2010, and (3) the results of the ongoing CSA 2010 operational model test. To view the final report for each of these listening sessions, including the feedback received, visit the Outreach and Media page on *http://csa2010.fmcsa.dot.gov*.

Comments Requested

FMCSA also requests written comments from all interested parties on the CSA 2010 program elements. For more detailed information on CSA 2010 commenters are invited to go to *http://csa2010.fmcsa.dot.gov*. Each commenter is requested to provide supporting data and rationale wherever possible.

Issued on: October 29, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–26412 Filed 11–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the

relief being requested, and the petitioner's arguments in favor of relief.

Town of Black Wolf, Wisconsin

[Waiver Petition Docket Number FRA–2009–0097]

The Town of Black Wolf, Wisconsin (Town), and the Wisconsin Central Limited (WC) seek a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR part 222. The Town and WC are seeking a waiver from the rule in order that two previously closed public at-grade crossings could be used in the calculation of the risk indices necessary to establish a quiet zone. Specifically, they are seeking a waiver from the provisions of 49 CFR part 222, appendix C, B–3 so that the risk indices that were associated with two closed crossings, Swiss Road and Country Club Road, could be used in the calculation of the Risk Index With Horns (RIWH) and the Quiet Zone Risk Index (QZRI). Both RIWH and QZRI are used in the quiet zone calculation process to determine eligibility for the establishing of a quiet zone.

The pertinent section of 49 CFR part 222, appendix C, section 1(B)(3) reads as follows: ''*Crossing closures:* If any public crossing within the quiet zone is proposed to be closed, include that crossing when calculating the Risk Index with Horns. The effectiveness of a closure is 1.0. However, be sure to increase the traffic counts at other crossings within the quiet zone and recalculate the risk indices for those crossings that will handle the traffic diverted from the closed crossing. It should be noted that crossing closures that are already in existence are not considered in the risk calculations.''

The Town is in the process of establishing a new quiet zone along the WC. The proposed quiet zone would consist of six public at-grade crossings and be approximately 4.3 miles in length.

The Town states that it began preparing for the quiet zone in the spring of 2001. The preparation has included the installation of automatic warning devices consisting of flashing lights and gates at all crossings. Additionally, the Town has closed two crossings: Swiss Road (DOT #690134B) in 2004, and Country Club Road (DOT #690137W) in December 2007. The Town affirms that all of these improvements were made with the intent of creating a quiet zone.

The Town states that due to budget constraints, it was necessary to spread out the safety improvements over several years. The design and construction costs for the closing of Swiss Road and Country Club Road were approximately $251,000. The Town's preliminary risk reduction calculations indicate that it will not be able to establish a quiet zone for the six remaining crossings as they are now configured. If risk reduction credit is not allowed for the two closed crossings, additional safety measures will have to be installed and the Town will incur additional costs. However, if risk reduction credit is provided for the closure of the two crossings, the Town's calculations indicate that it would be able to establish a quiet zone without any additional improvements. (**Note:** Please see the docket to view the Town's calculations).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0097) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on October 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–26435 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Dallas Area Rapid Transit

[Docket Number FRA–2004–20000]

The Dallas Area Rapid Transit (DART), located in Dallas, TX, seeks an extension of its permanent waiver of compliance from Title 49 of the CFR for continued operation of a light rail line at a ''limited connection'' with the Dallas Garland and Northeastern Railroad (DGNO). *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,* 65 FR 42529 (July 10, 2000); *see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems,* 65 FR 42626 (July 10, 2000).

DART is currently expanding its light rail operations and will double in size to 93 miles by 2014. Expansion includes shared corridor operation with DGNO with up to 50 or more limited connections at shared highway-rail grade crossings anticipated.

Based on the foregoing, DART is seeking an extension of the terms and conditions of its current waiver of compliance from the provisions of the

Federal Railroad Locomotive Safety Standards, 49 CFR 229.125—Headlights and Auxiliary Lights, and 49 CFR 234.105—Activation Failure. Other than new construction of the new light rail lines described in the original petition, DART claims that no modifications or changes have occurred since the first waiver was granted on May 2, 2005.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2004–20000) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on October 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–26433 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway

[Waiver Petition Docket Number FRA–1999–5756]

The Canadian National Railway (CN) seeks to expand a previously granted waiver of compliance with the *Locomotive Safety Standards,* 49 CFR 229.47(a), which requires each car body-type road locomotive be equipped with an emergency brake valve adjacent to each end exit door, and the brake pipe valve locations shall be stencilled as ''EMERGENCY BRAKE VALVE'' or shall be identified on an adjacent badge plate.

CN's original request was for 178 car body locomotives built between 1985 and 1990. It was utilized to haul freight that have never been equipped with an emergency brake valve at the rear exit door. The original waiver received conditional approval from FRA's Safety Board on April 14, 2000. Subsequent to the approval, CN acquired 40 additional car body-type locomotives when they acquired ownership of BC Rail Ltd., which did not meet the requirements of 49 CFR 229.47(a). CN requests that these 40 locomotives be added to the 178 locomotives that were previously granted relief under waiver Docket Number FRA–1999–5756.

Since the original granting of the waiver for the 178 car body-type locomotives, CN has been unaware of any problems arising from the lack of an emergency brake valve adjacent to the rear end exit door.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5756) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on October 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–26442 Filed 11–2–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comments concerning an information collection titled ''Bank Secrecy Act/Money Laundering Risk Assessment'' (a.k.a. Money Laundering Risk (MLR) System).

DATES: Comments must be submitted by January 4, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0231, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OMB Desk Officer, 1557–0231, by mail to U.S. Office of Management and Budget, 725 17th St., NW., #10235, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend the approval for the following information collection:

Title: Bank Secrecy Act/Anti-Money Laundering Risk Assessment.

OMB Number: 1557–0231.

Affected Public: Businesses or other for-profit.

Type of Review: Regular review.

Abstract: The MLR System enhances the ability of examiners and bank management to identify and evaluate any Bank Secrecy Act/Anti-Money Laundering risks associated with the banks' products, services, customers, and locations. As new products and services are introduced, existing products and services change, and the banks expand through mergers and acquisitions, management's evaluation of money laundering and terrorist financing risks must evolve as well. Absent appropriate controls, such as this risk assessment, these lines of business, products, or entities could elevate Bank Secrecy Act/Anti-Money Laundering risks.

Burden Estimates:

Estimated Number of Respondents: 1,467.

Estimated Number of Responses: 1,467.

Frequency of Response: Annually.

Estimated Annual Burden: 8,802 hours.

Comments: All comments will be considered in formulating the subsequent submission and 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 has 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 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.

Dated: October 27, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–26443 Filed 11–2–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Securities Exchange Act Disclosure Rules (12 CFR Part 11).'' The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: Comments must be received by December 3, 2009.

ADDRESSES: You should direct your comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0106, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0106, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the

Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Securities Exchange Act Disclosure Rules (12 CFR Part 11).

OMB Control No.: 1557–0106.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised estimates.

The Securities and Exchange Commission (SEC) is required by statute to collect, through regulation, from any firm that is required to register its stock with the SEC, certain information and documents. 15 U.S.C. 78m(a)(1). Federal law also requires the OCC to apply similar regulations to any national bank similarly required to be registered (those with a class of equity securities held by 500 or more shareholders). 15 U.S.C. 78l(i).

12 CFR Part 11 ensures that ''a national bank whose securities are subject to registration'' provides adequate information about its operations to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that national banks comply with Federal law and make public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 29.

Estimated Total Annual Responses: 185.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,130.5.

The OCC issued a 60-day **Federal Register** notice on August 14, 2009. 74 FR 41189. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 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.

Dated: October 27, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–26444 Filed 11–2–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Privacy of Consumer Financial Information (12 CFR part 40).''

DATES: You should submit written comments by January 4, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0216, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments by mail to OCC Desk Officer, 1557–0216, U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Privacy of Consumer Financial Information (12 CFR part 40).

OMB Control No.: 1557–0216.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised estimates.

The information collection requirements in part 40 are as follows:

§ 40.4(a)—Disclosure (institution)—Initial privacy notice to consumers requirement—A bank must provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to customers and consumers.

§ 40.5(a)—Disclosure (institution)—Annual privacy notice to customers requirement—A bank must provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship.

§ 40.8—Disclosure (institution)—Revised privacy notices—If a bank wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer, the bank must provide consumers with a clear and conspicuous revised notice of the bank's policies and procedures and a new opt out notice.

§ 40.7(a)—Disclosure (institution)—Form of opt out notice to consumers; opt out methods—Form of opt out notice—If a bank is required to provide an opt-out notice under § 40.10(a), it must provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice must state:

- That the bank discloses or reserves the right to disclose nonpublic personal information about its consumer to a nonaffiliated third party;
- That the consumer has the right to opt out of that disclosure; and
- A reasonable means by which the consumer may exercise the opt out right.

A bank provides a reasonable means to exercise an opt out right if it:

• Designates check-off boxes on the relevant forms with the opt out notice;

• Includes a reply form with the opt out notice;

• Provides electronic means to opt out; or

• Provides a toll-free number to opt out.

§§ 40.10(a)(2) and 40.10(c)—Consumers must take affirmative actions to exercise their rights to prevent financial institutions from sharing their information with nonaffiliated parties–

• Opt out—Consumers may direct that the bank not disclose nonpublic personal information about them to a nonaffiliated third party, other than permitted by §§ 40.13–40.15.

• Partial opt out—Consumer may also exercise partial opt out rights by selecting certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§§ 40.7(f) and (g)—Reporting (consumer)—Consumers may exercise continuing right to opt out—Consumer may opt out at any time—A consumer may exercise the right to opt out at any time. A consumer's direction to opt out is effective until the consumer revokes it in writing or, if the consumer agrees, electronically. When a customer relationship terminates, the customer's opt out direction continues to apply.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Annual Number of Institution Respondents: Initial Notice, 11; Annual Notice and Change in Terms, 1,625; Opt-out Notice, 813.

Estimated Average Time Per Response Per Institution: Initial Notice, 80 hours; Annual Notice and Change in Terms, 8 hours; Opt-out Notice, 8 hours.

Estimated Subtotal Annual Burden Hours for Institutions: 20,384 hours.

Estimated Annual Number of Consumer Respondents: 15,028,802.

Estimated Average Time Per Consumer Response: 0.25 hours.

Estimated Subtotal Annual Burden Hours for Consumers: 3,757,200.5 hours.

Estimated Total Annual Burden Hours: 3,777,584.5 hours.

Comments submitted in response to this notice will be summarized and 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 has 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 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.

Dated: October 27, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–26441 Filed 11–2–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Leasing.'' The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: Comments must be received by December 3, 2009.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, *Attention:* 1557–0206, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0206, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Leasing (12 CFR Part 23).

OMB Control No.: 1557–0206.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend the expiration date.

Information Collection Requirements Found in 12 CFR Part 23

12 CFR 23.4(c)

Under 12 CFR 23.4(c), national banks must liquidate or re-lease personal property that is no longer subject to lease (off-lease property) within five years from the date of the lease expiration. If a bank wishes to extend the five-year holding period for up to an additional five years, it must obtain OCC approval. Permitting a bank to extend the holding period may result in cost savings to national banks. It also provides flexibility for a bank that experiences unusual or unforeseen conditions that would make it imprudent to dispose of the off-lease property before the expiration date of the five-year period. Section 23.4(c) requires a bank seeking an extension to provide a clearly convincing demonstration as to why an additional holding period is necessary. In addition, a bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease. These requirements enable the OCC to ensure that a bank is not holding the property for speculative reasons and that the value of the property is recorded in accordance with

generally accepted accounting principles (GAAP).

Section 23.5

Under 12 CFR 23.5, leases are subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c-1. *See* 12 CFR 23.6. Twelve U.S.C. 24 contains two separate provisions authorizing a national bank to acquire personal property for purposes of lease financing. Twelve U.S.C. 24(Seventh) authorizes leases of personal property (Section 24(Seventh) Leases) if the lease serves as the functional equivalent of a loan. See 12 CFR 23.20. A national bank also may acquire personal property for purposes of lease financing under the authority of 12 U.S.C. 24(Tenth) (CEBA Leases). Section 23.5 requires that if a bank enters into both types of leases, its records must distinguish between the two types of leases. This information is required to demonstrate that the national bank is complying with the limitations and requirements applicable to the two types of leases.

National banks use the information to ensure their compliance with applicable Federal banking law and regulations and accounting principles. The OCC uses the information in the conduct of bank examinations and as an audit tool to verify bank compliance with law and regulations. In addition, the OCC uses national bank requests for permission to extend the holding period for off-lease property to ensure national bank compliance with relevant law and regulations and to ensure bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 370.

Estimated Total Annual Responses: 370.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 685.

The OCC issued a 60-day **Federal Register** notice on August 14, 2009. 74 FR 41187. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 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.

Dated: October 27, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–26439 Filed 11–2–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund: Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (the CDFI Fund).

DATES: The next meeting of the Advisory Board will be held from 9 a.m. to 5 p.m. Eastern Time on Monday, November 16, 2009.

ADDRESSES: The Advisory Board meeting will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue, NW., Washington, DC 20005.

FOR FURTHER INFORMATION, CONTACT: The CDFI Fund's Office of Legislative and External Affairs, 601 Thirteenth Street, NW., Suite 200 South, Washington, DC 20005, (202) 622–8042 (this is not a toll-free number). Other information regarding the CDFI Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Advisory Board shall not advise the Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue, NW., Washington, DC 20005, from 9 a.m. to 5 p.m. Eastern Time on Monday, November 16, 2009. The room will accommodate up to 50 members of the public. Seats are available to members of the public on a first-come, first-served basis.

Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Because the meeting will be held in a secured Federal building, members of the public who desire to attend the meeting must contact the CDFI Fund's Office of Legislative and External Affairs by 5 p.m. Eastern Time on Wednesday, November 11, 2009 by e-mail at *AdvisoryBoard@cdfi.treas.gov*, to inform the CDFI Fund of your desire to attend the meeting and to provide the following information which is required to facilitate your entry to the facility: Name as it appears on a government issued identification; date of birth; and social security number.

Anyone who would like to have the Advisory Board consider a written statement must submit it to the CDFI Fund's Office of Legislative and External Affairs by 5 p.m. Eastern Time on Wednesday, November 11, 2009 by mail to 601 Thirteenth Street, NW., Suite 200 South, Washington, DC 20005, or by e-mail at *AdvisoryBoard@cdfi.treas.gov*.

The Advisory Board meeting will include a report from the Director on the activities of the Fund since the last Advisory Board meeting, as well as policy, programmatic, fiscal and legislative initiatives for the years 2009 and 2010.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: October 28, 2009.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E9–26365 Filed 11–2–09; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division, Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for the following vacancies, which will occur in June 2010: Two (2) employee plans; two (2) exempt organizations. There are no openings in Indian Tribal governments, tax exempt bonds, or Federal, State and local governments. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise. Members of the ACT may not be Federally registered lobbyists.

DATES: *Due Date:* Written applications or nominations must be received on or before Dec. 1, 2009.

Application: Applicants may use the ACT Application Form on the IRS Web site (IRS.gov) or may send an application by letter with the following information: Name; Other Name(s) Used and Date(s) (required for FBI check); Date of Birth (required for FBI check); City and State of Birth (required for FBI Check); Current Address; Telephone and Fax Numbers; and e-mail address, if any. Applications should also describe and document the proposed member's qualifications for membership on the ACT. Applications should also specify the vacancy for which they wish to be considered.

ADDRESSES: Send all applications and nominations to: Steven J. Pyrek, Director TE/GE Communications and Liaison, 1111 Constitution, Ave., NW.,—SE:T:CL, Penn Bldg., Washington, DC 20224; FAX: (202) 283–9956 (not a toll-free number); e-mail: *steve.j.pyrek@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Steven Pyrek (202) 283–9966 (not a toll-free number) or by e-mail at *steve.j.pyrek@irs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and Federal, State, local, and Indian Tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements.

ACT members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Terms can be extended for an additional year. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C. 5703.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans and tax-exempt organizations to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for membership on the ACT. Nominations should also specify the vacancy for which they wish to be considered. The Secretary seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and Federal, State, local and Indian Tribal governments.

Nominees must go through a clearance process before selection by the Secretary of the Treasury. In accordance with the Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and an FBI criminal and subversive name check, fingerprint check, and security clearance.

Dated: October 28, 2009.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. E9–26334 Filed 11–2–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service; Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will be held on November 24, 2009, at the L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC. The meeting is scheduled to begin at 8 a.m. and end at 1 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 461–1700.

Dated: October 26, 2009.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. E9–26400 Filed 11–2–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
November 3, 2009

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Determination Concerning the Potential for Energy Conservation Standards for Non-Class A External Power Supplies; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–DET–0005]

RIN 1904–AB80

Energy Conservation Program for Consumer Products: Determination Concerning the Potential for Energy Conservation Standards for Non-Class A External Power Supplies

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

ACTION: Proposed determination.

SUMMARY: The Energy Policy and Conservation Act (EPCA or the Act), as amended, requires the U.S. Department of Energy (DOE) to issue a final rule by December 19, 2009, that determines whether energy conservation standards for non-Class A external power supplies (EPSs) are warranted.

In this document, DOE proposes to determine that energy conservation standards for non-Class A external power supplies are warranted. This document informs interested parties of the analysis underlying this proposal, which examines the potential energy savings and the direct economic costs and benefits that could result from a future standard. In this document, DOE also announces the availability of a technical support document (TSD), which provides additional analysis in support of the determination. The TSD is available from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html*.

DATES: Written comments on this document and the TSD are welcome and must be submitted no later than December 18, 2009. For detailed instructions, see section VI, ''Public Participation.''

ADDRESSES: Interested parties may submit comments, identified by docket number EERE–2009–BT–DET–0005 and/or Regulation Identifier Number (RIN) 1904–AB80, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: EPS-2009-DET-0005@ee.doe.gov.* Include docket number EERE–2009–BT–DET–0005 and/or RIN 1904–AB80 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Technical Support Document for Non-Class A External Power Supplies, docket number EERE–2009–BT–DET–0005 and/or RIN 1904–AB80, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

For additional instruction on submitting comments, see section VI, ''Public Participation.''

Docket: For access to the docket to read background documents, the technical support document, or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room. You may also obtain copies of certain documents in this proceeding from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–4549. E-mail: *Victor.Petrolati@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–8145. E-mail: *Michael.Kido@hq.doe.gov*.

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

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Determination
A. Background and Legal Authority
B. Scope
II. Methodology
A. Market Assessment
1. Introduction
2. Shipments, Efficiency Distributions, and Market Growth
3. Product Lifetimes
4. Distribution Channels and Markups
5. Interested Parties
6. Existing Energy Efficiency Programs
B. Technology Assessment
1. Introduction
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I. Summary of the Proposed Determination

EPCA requires DOE to issue a final rule determining whether to issue energy efficiency standards for non-Class A EPSs. DOE has tentatively determined that such standards are technologically feasible and economically justified, and would result in significant energy savings. Thus, DOE proposes to issue a positive determination.

DOE analyzed multiple candidate standard levels for non-Class A EPSs and has determined that it is technologically feasible to manufacture

EPSs at some of these levels because EPSs with energy efficiencies meeting these levels are currently commercially available.

DOE further determined that standards for non-Class A EPSs could be economically justified from the perspective of an individual consumer and from that of the Nation as a whole. For all EPSs that DOE analyzed, at least one standard level could be set that would reduce the life-cycle cost (LCC) of ownership for the typical consumer; that is, any increase in equipment cost resulting from a standard would be more than offset by energy cost savings.

Standards could also be cost-effective from a national perspective. The national net present value (NPV) of standards could be as much as $512 million in 2008$, assuming an annual discount rate of 3 percent. This forecast considers only the direct financial costs and benefits to consumers of standards, specifically the increased equipment costs of EPSs purchased from 2013 to 2042 and the associated energy cost savings. In its determination analysis, DOE did not monetize or otherwise characterize any other potential costs and benefits of standards such as manufacturer impacts or power plant emission reductions. If the final determination is positive, then such impacts would be examined in a future analysis of the economic feasibility of particular standard levels in the context of a standards rulemaking.

DOE's analysis also indicates that standards would result in significant energy savings—as much as 0.14 quads of energy over 30 years (2013 to 2042). This is equivalent to the annual electricity needs of 1.1 million U.S. homes.

Further documentation supporting the analyses described in this notice is contained in a separate technical support document (TSD), available from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html*.

This document's information and format are unique to this determination analysis and do not establish a precedent for future determination analyses of the Appliance Standards Program. The unique nature of this document results from the statutory requirement that the determination be published as a rule (*i.e.,* notice of proposed rulemaking (NOPR) and final rule). In addition, although Congress, through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007), directed DOE to perform this analysis, some of the analyses and information contained in this document were developed earlier as part of the determination analysis required by EPACT 2005.

A. Background and Legal Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The Energy Policy Act of 2005 (EPACT 2005) amended EPCA to require DOE to issue a final rule determining whether to issue efficiency standards for battery chargers (BCs) and EPSs. DOE initiated this determination analysis rulemaking in 2006, which included a scoping workshop on January 24, 2007 at DOE headquarters in Washington, DC. The determination was under way and on schedule for issuance by August 8, 2008, as originally required by EPACT 2005.

However, EISA 2007 also amended EPCA by setting efficiency standards for certain types of EPSs (Class A) and modifying the statutory provision that directed DOE to perform the determination analysis (42 U.S.C. 6295(u)(1)(E)(i)(I), as amended). EISA 2007 removed BCs from the determination, leaving only EPSs, and changed the amount of time allotted to complete the determination to 2 years after the date of EISA 2007's enactment, *i.e.,* by December 19, 2009.

In addition to the existing general definition of EPS, EISA 2007 amended EPCA to define a ''Class A external power supply'' (42 U.S.C. 6291(36)(C)) and set efficiency standards for those products (42 U.S.C. 6295(u)(3)). As amended by EISA 2007, the statute further directs DOE to publish a final rule by July 1, 2011 to evaluate whether the standards set for Class A EPSs should be amended and, if so, include any amended standards as part of that final rule. The statute further directs DOE to publish a second final rule by July 1, 2015, to again determine whether the standards in effect should be amended and to include any amended standards as part of that final rule.

Because Congress has already set standards for Class A EPSs and separately required DOE to perform two rounds of rulemakings to consider amending efficiency standards for Class A EPSs, the determination analysis under 42 U.S.C. 6295(u)(1)(E)(i)(I) does not include these products. Therefore, DOE is interpreting 42 U.S.C. 6295(u)(1)(E)(i)(I) as a requirement for a determination analysis that will consider in its scope only EPSs outside of Class A, hence ''non-Class A EPSs.'' This determination is scheduled for issuance by December 19, 2009 and is the subject of this notice. The determination will address whether efficiency standards appear to be warranted for non-Class A EPSs, *i.e.,* whether it appears that such standards are technologically feasible and economically justified and would result in significant conservation of energy (42 U.S.C. 6295(o)(3)(B)).

EISA 2007 amendments to EPCA also require DOE to issue a final rule prescribing energy conservation standards for BCs, if technologically feasible and economically justified, by July 1, 2011 (42 U.S.C. 6295(u)(1)(E)(i)(II)). This rulemaking has been bundled with the rulemaking for Class A EPSs, given the related nature of such products and the fact that these provisions share the same statutory deadline. DOE initiated the energy conservation standards rulemaking for BCs and Class A EPSs by publishing a framework document on June 4, 2009, and holding a public meeting at DOE headquarters on July 16, 2009. If DOE issues a positive determination for EPSs falling outside of Class A, it may consider standards for these products within the context of the energy conservation standards rulemaking for BCs and Class A EPSs already underway.

In addition to the determination and energy conservation standards rulemakings, DOE has conducted test procedure rulemakings for BCs and EPSs. The test procedure for measuring the energy consumption of single-voltage EPSs is codified in 10 CFR part 430, subpart B, appendix Z, ''Uniform Test Method for Measuring the Energy Consumption of External Power Supplies.'' DOE modified this test procedure, per EISA 2007, to include standby and off modes. DOE proposed a test procedure for measuring the energy consumption of multiple-voltage EPSs in its NOPR published in the **Federal Register** on August 15, 2008. 73 FR 48054. DOE has set the target date of October 31, 2010 to finalize the test procedure for multiple-voltage EPSs.

For more information about DOE rulemakings concerning BCs and EPSs, see the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html*.

B. Scope

The present determination analysis considers only those EPSs outside of Class A, or non-Class A EPSs. EPCA, as amended by EPACT 2005, defines an EPS. See 42 U.S.C. 6291(36)(A).

EISA 2007 later amended EPCA, inserting a definition for Class A EPS. See 42 U.S.C. 6291(36)(C).

Thus, the determination analysis concerns those devices that fit the definition of an EPS (from EPACT 2005) but do not fit the definition of a Class A EPS (from EISA 2007).

Considering the above definitions, DOE identified four types of power conversion devices on the market to analyze for its determination on non-Class A EPSs: (1) Multiple-voltage EPSs—EPSs that can provide multiple output voltages simultaneously; (2) high-power EPSs—EPSs with nameplate output power greater than 250 watts; (3) medical EPSs—EPSs that power medical devices and EPSs that are themselves medical devices; and (4) EPSs for battery chargers (EPSs for BCs)—EPSs that power the chargers of detachable battery packs or charge the batteries of products that are fully or primarily motor operated.

Class A EPSs, by definition, may provide only one output voltage at a time and have nameplate output power no greater than 250 watts. Multiple-voltage and high-power EPSs fall outside this group. Medical EPSs and EPSs for battery chargers are specifically excluded from Class A and can be considered non-Class A EPSs.

DOE considers both EPSs that power medical devices and EPSs that are themselves medical devices to be non-Class A EPSs. A literal reading of EPCA would exclude from Class A only those EPSs that are themselves medical devices. As EPCA states, ''The term 'class A external power supply' does not include any device that requires Federal Food and Drug Administration listing and approval as a medical device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c).'' 42 U.S.C. 6291(36)(C) However, a search of FDA's product classification database for ''power supply'' reveals only one EPS that is a medical device—auxiliary power supply (alternating current (AC) or direct current (DC)) for external transcutaneous cardiac pacemakers. Furthermore, all EPSs used with medical devices must meet the special requirements of UL 60601 (Underwriters Laboratories standard for power supplies for medical devices), discussed further in section 2.2.3 of the TSD. Accordingly, because the exclusion applies to ''any device'' covered by the FDA's listing and approval requirements, DOE interprets EPCA to also exclude from Class A those EPSs that power medical devices. Consistent with this approach, DOE analyzed those EPSs that power medical devices that are consumer products for purposes of today's proposed determination.

Lastly, DOE considered EPSs that power the chargers of detachable battery packs or charge the batteries of products that are fully or primarily motor operated. DOE refers to these two groups of products collectively as ''EPSs for BCs.'' Products that are fully or primarily motor operated include portable rechargeable household appliances such as handheld vacuums, personal care products such as shavers, and power tools.

EPCA, as amended by EISA 2007, defines a detachable battery as ''a battery that is (A) contained in a separate enclosure from the product; and (B) intended to be removed or disconnected from the product for recharging.'' (42 U.S.C. 6291(52)) The phrase ''contained in a separate enclosure from the product'' appears earlier within the Class A EPS definition. In this context, the definition limits Class A EPSs to devices ''contained in a separate physical enclosure from the end-use product,'' *i.e.,* a separate component outside the physical boundaries of the end-use consumer product. (42 U.S.C. 6291(36)(C)(i)(IV)) Similarly, when applied to detachable batteries, this phrase can also be interpreted to mean ''wholly outside the physical boundaries of the end-use consumer product.'' BCEPS Framework Document, p. 21 (June 4, 2009), available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external_std_2008.html*. This is in contrast to batteries contained in an enclosure wholly or partly inside the physical boundaries of the end-use consumer product (*e.g.,* inside a battery compartment).

Further, detachable batteries must be ''intended to be removed or disconnected from the product for recharging.'' (42 U.S.C. 6291(52)(B)) Thus, even if a battery is not contained inside the product, it may not be considered detachable unless it is also intended to be removed or disconnected from the product for recharging.

Several popular models of camcorders employ wall adapters that can be used to power the camcorder and charge its battery. Even though these batteries are not contained inside the product, it is not necessary to remove them for charging. Rather, the wall adapter plugs directly into the camcorder body or into a cradle that accepts the entire camcorder. Because the batteries do not need to be removed for recharging, DOE does not consider these batteries detachable. Accordingly, wall adapters for these camcorders are included in the Class A EPS definition (42 U.S.C. 6291(36)(C)(ii)(II)) and, therefore, are not analyzed in this determination.

The statute does not provide clear guidance for determining which, if any, of the devices that power battery-charged products are EPSs and leaves open the issue of how DOE should classify the wall adapters that are part of battery charging systems. Because ''external power supply'' has a specific legal meaning, the term ''wall adapter'' is used to refer to the potentially larger set of external power converters for consumer products. DOE's initial review of these products indicates that some of these wall adapters for battery chargers could be electrically equivalent to the wall adapters that power applications other than battery chargers. However, while all wall adapters ''convert household electric current into DC current or lower-voltage AC current,'' as stated in the statutory definition (42 U.S.C. 6291(36)(A)), at least some wall adapters for battery chargers also provide additional charge control functions necessary for battery charging. These additional functions may add to the cost and power consumption of the wall adapter. These wall adapters generally are not interchangeable, but are designed to be components of specific BCs.

DOE is considering adopting one of two approaches relevant to this determination analysis with respect to when a wall adapter would be categorized as an EPS. The approaches differ in their scope of coverage for EPSs. Under the first approach (Approach A), DOE would consider only those wall adapters that do not provide additional charge control functions to be EPSs. These EPSs have constant-voltage output that is electrically equivalent to Class A EPSs. Under the other approach (Approach D), DOE would consider wall adapters with and without charge control functions to be EPSs. These include EPSs with constant-voltage output equivalent to Class A EPSs as well as those that do not have constant-voltage output, which may indicate the presence of charge control. The approaches are described in greater detail in section 3.2.3.3 of DOE's framework document for the BC and EPS energy conservation standards rulemaking (available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external_std_2008.html*). Interested parties are encouraged to refer to the framework document for more detail and provide input to DOE on the approaches. (Other approaches described in that document are not used in today's analysis because either they

would conflict with statutory requirements, *i.e.*, Approach B, or would be equivalent in scope to Approach A, *i.e.*, Approach C.) DOE will consider all comments received in its selection of an approach.

The present determination analysis includes only those devices that are EPSs under Approach A (wall adapters without charge control). Under Approach A, this draft determination finds that energy efficiency standards are economically justified, technologically feasible, and would result in significant energy savings. Based on the data collected to date, the set of EPSs under Approach A is a subset of EPSs under Approach D. Thus, DOE believes that were it to adopt the broader Approach D, the energy savings potential from standards for non-Class A EPSs would be greater compared to Approach A. DOE seeks comment on whether Approach A reasonably estimates the minimum amount of significant energy savings under this analysis.

While the approaches noted above address the question of what is and is not an EPS, there are additional scoping issues unique to non-Class A EPSs. In particular, there are four criteria under which an EPS could be considered non-Class A: (1) Multiple output voltages, (2) high output power, (3) designed for medical use, and (4) designed for battery charging. This determination analysis examines EPSs that meet any one of these criteria, but not those EPSs that meet multiple criteria. These EPSs remain within the scope of the determination, however. For instance, this analysis does not evaluate EPSs such as the Astec Electronics power supply model DPT54–M, which has three simultaneous output voltages and UL 60601 medical certification, although it does address EPSs with either multiple output voltages or medical certification under UL 60601. Based on its review of the available data, DOE believes that there are few products that fall into this ''multiple criteria'' category. Accordingly, a separate analysis for these types of products was not conducted because the energy savings potential from incorporating these devices into the analysis would again be greater compared to the analysis under Approach A.

II. Methodology

A. Market Assessment

1. Introduction

To understand the present and future market for non-Class A EPSs, DOE gathered data on these EPSs and their associated applications. DOE also examined the industry composition, distribution channels, and regulatory and voluntary programs for non-Class A EPSs. The market assessment provides important inputs to the LCC analysis and national energy savings (NES)/NPV estimates.

This notice is not intended to provide a general background on the market for all EPSs, but rather to present specific information for those EPSs outside of Class A. For additional background information on EPSs in general, see the framework document and the companion draft technical report published on June 4, 2009.

a. Overview

External power supplies are designed for use with an associated consumer product. The market for these consumer products drives the market for EPSs. References to an EPS application refer to the consumer product that the EPS powers and not the conversion function of the EPS itself. Energy savings potential for EPSs is thus a function of usage and sales volume of applications powered by EPSs, in addition to EPS efficiency.

Because EPSs are typically sold with their end-use application, shipment data for EPSs alone are not directly available. Therefore, DOE estimated EPS shipments based on applications known to use them. The amount of energy an application uses over the course of a year will directly affect the amount of savings that can be expected by improving the efficiency of the EPS. The product application determines the power requirements, usage profile, and load profile of the EPS.

For its market analysis, DOE first identified those applications known to use non-Class A EPSs. DOE then analyzed shipments and energy usage data for those applications to calculate shipments and energy usage of the associated EPSs. DOE considered applications for which publicly available data exist or for which industry and other interested parties provided data.

Applications for each of the four types of non-Class A EPS DOE identified are discussed below.

b. Multiple-Voltage External Power Supplies

The consumer product market for EPSs with multiple simultaneous outputs (multiple-voltage EPSs) is limited. For consumer products that require multiple voltages, most manufacturers indicated that it is more cost effective to specify a single output EPS and employ local DC–DC converters located within the application rather than a multiple-voltage EPS. Multiple-voltage EPSs are commonly used in only two circumstances:

(1) Low-volume applications, such as lab equipment and product prototypes, where designing and implementing an internal splitter would be cost-prohibitive. Because low-volume applications are, by definition, limited in market size, DOE will not consider EPSs for these products further.

(2) High-volume applications where space limitations may cause manufacturers to seek alternatives to an internal power supply with voltage splitting circuitry.

DOE has identified three consumer product applications that sometimes use multiple-voltage EPSs: Video game consoles, multi-function devices (MFDs), and home security systems.

The Xbox 360, manufactured by Microsoft Corporation, is one video game console that uses a multiple-voltage EPS. This EPS functions much like the internal power supply of a desktop computer, providing separate voltage levels for standby, monitoring, and processing functions. Competing systems such as the Nintendo Wii and Sony PlayStation 3 use internal power supplies.

Multi-function devices duplicate the functions of some or all of the following devices: Copiers, printers, scanners, and facsimile machines. These devices are also commonly referred to as ''all-in-one'' systems or multifunction printers. MFDs eliminate the need to purchase and maintain multiple pieces of office equipment and typically are used in small- or home-office settings. A single multiple-voltage EPS design can be used across multiple MFD models, eliminating the need to design and build several different internal splitters. Also, using a multiple-voltage EPS may allow the MFD to have a smaller form factor, which refers to the physical size of the application.

Security systems in homes may include entry detection, video and thermal detection, and emergency and fire alert systems. Such equipment is often used in conjunction with a security subscription through which a security services company monitors the equipment for the consumer. In this way, security equipment is distributed and used in a similar manner to cable set-top boxes and Internet modems provided by telecommunications companies. In comments submitted to DOE following the Standby and Off Mode Test Procedure NOPR Public Meeting on September 12, 2008, the Security Industry Association indicated

that some of these products may be powered by multiple-voltage EPSs (Docket No. EERE–2008–BT–TP–0004. Security Industry Association, No. 7 at p. 2.). However, in a follow-up interview on March 19, 2009, SIA indicated that the equipment powered by these multiple-voltage EPSs is limited to fire alarm systems, specifically to power horns and strobe light control circuitry in commercial buildings, not homes. Based on this information, DOE did not analyze the multiple-voltage EPSs used to power security equipment as part of the draft analysis. DOE encourages interested parties to submit additional data on the use of multiple-voltage EPSs with home security equipment. DOE also encourages interested parties to submit information about any other consumer product applications for multiple-voltage EPSs they are aware of.

c. High Power External Power Supplies

High-power EPSs—those with output power greater than 250 watts—are rarely used to power consumer products. Internal power supplies are generally preferred for higher powered applications. Industry experts give three reasons for this preference. First, internal power supplies offer increased ventilation options, including fans, vent slats, and cooling fins, all of which would be difficult to include in most EPS designs without increasing bulk. Second, most applications that would require such a high power input will already be large, which means the increase in volume from the internal power supply would have a proportionally small effect. Third, power regulation and voltage drop are much easier to control with an internal supply due to the shorter transmission distances.

For these reasons, there are few circumstances in which an appliance uses a high-power EPS rather than an internal power supply. In fact, many appliances already use internal power supplies at a wide range of power levels. Major applications for high power internal power supplies include audio amplifiers, televisions, and computers.

Amateur radio equipment is the only consumer product application DOE identified as using high-power EPSs. (Other applications identified include laboratory testing equipment and other low-volume applications that were not considered for analysis.) Amateur radio operators typically use high-power EPSs when they need to power multiple components simultaneously and transmit at output powers between 100 and 200 watts. (Interview with the with the American Radio Relay League on August 18, 2008.) Operators typically use an EPS with nameplate output power greater than 250 watts to allow for a cushion should equipment requiring additional power be added to the set-up. This is often the case for portable transmission setups, such as those used at amateur radio fairs or in emergency situations. In both cases, the need to power multiple components while maintaining sufficient transmission power requires an EPS with a suitably high output.

However, in home or office use, most radio operators use a more standardized setup. In this environment, most amateur radio equipment, including transmission equipment, is designed to run directly off mains power, using internal power supplies. In addition, when transmitting at higher power, a radio operator will likely use a separate signal amplifier that contains an internal power supply. Therefore, EPSs are seldom used in fixed transmission setups.

d. External Power Supplies for Medical Devices

EPSs are used to power a wide variety of medical devices, from laboratory test equipment to home care devices. As discussed further in section 2.2.3 of the TSD, EPSs are required by the Federal Food and Drug Administration (FDA) to meet labeling, safety and durability requirements such as those included under UL 60601. To maintain certification, the medical device manufacturer must always use the same components in the device, including those used in the EPS. Therefore, once a device is certified, its EPS cannot be exchanged for a different EPS model without re-certification. An EPS model must also use the same individual components for the entirety of the production cycle. These requirements tend to lengthen the design cycles for medical device EPSs because after being designed they must be registered, which can take up to 2 years. Despite long design cycles, there are already medical device EPSs on the market that meet the energy efficiency standards for Class A EPSs that took effect on July 1, 2008. (SL Power Web site (Accessed October 30, 2008) *http://www.slpower.com/ProductDetails.aspx?CategoryID=46*.)

For this determination, DOE examined medical devices designed for in-home use that employ EPSs, specifically sleep therapy devices, nebulizers, portable oxygen concentrators, blood pressure monitors, and ventilators. EPSs for these medical devices exhibit a broad range of nameplate output powers, similar to those of Class A EPSs.

Sleep therapy devices include continuous positive airway pressure (CPAP), bi-level positive airway pressure (biPAP), automatic positive airway pressure (autoPAP), and similar machines used to treat obstructive sleep apnea. Some sleep therapy devices are battery powered, some plug directly into mains, and others are powered by EPSs, which typically have nameplate output power of approximately 30 to 35 watts. (Schirm, Jeffrey. Personal Communication. Philips Electronics, NV. Phone call with Matthew Jones, D&R International. December 15, 2008.)

Nebulizers administer liquid medication as a mist that can be inhaled into the lungs. They are commonly used to treat asthma and chronic obstructive pulmonary disease (COPD). The EPSs that provide power to nebulizers tend to have nameplate output power in the range of 10 to 20 watts. Of the 26 nebulizer models DOE identified, only four employ EPSs; the remainder use internal power supplies. (Models using EPSs include the PARI Trek S, Omron Comp Air Elite Model NE–C30, Omron Micro Air Model NE–U22VAC, and John Bunn Nano-Sonic Nebulizer Model JB0112–066. An EPS is an option for Omron Micro Air, which is typically powered with primary batteries. The EPS cannot charge these batteries. The other nebulizers are sold with an EPS to power the product but offer rechargeable battery packs as an optional accessory.)

Portable oxygen concentrators absorb nitrogen from the air to provide oxygen to the user at higher concentrations, eliminating the need for oxygen tanks. These devices typically use higher powered wall adapters ranging from 90 to 200 watts. The wall adapters are used to charge batteries, but can also operate the device directly.

Blood pressure monitors are used by those who must take frequent readings of their blood pressure. Most digital units operate with primary batteries; however, some units are also sold with an EPS or offer an optional EPS. (The Omron IntelliSense blood pressure meter, model HEM780, has an EPS rated at 6V and 500 mA but can also be powered by primary batteries (''AA,'' ''AAA,'' ''C,'' among others).) The EPSs for blood pressure monitors that DOE identified have a nameplate output power of 3 watts.

Though most commonly found in hospitals, ventilators are also available for home use. While most models have internal power supplies, some use EPSs with output power in the range of approximately 100 to 150 watts.

e. External Power Supplies for Certain Battery Chargers

This group is composed of EPSs for two types of battery chargers: (1) Battery chargers used to charge detachable battery packs, and (2) battery chargers that charge the batteries of products that are fully or primarily motor operated. The term ''detachable battery'' means a battery that is (A) contained in a separate enclosure from the product; and (B) intended to be removed or disconnected from the product for recharging. DOE's interpretation of ''detachable battery'' is explained in section I.B.

Under its interpretation of the term ''detachable battery,'' DOE has not identified any non-motor operated applications with an EPS that powers the charger of a detachable battery pack. DOE invites interested parties to submit any information they have about applications of this type that use non-Class A EPSs.

DOE identified a number of motor-operated, battery-charged products that use wall adapters. The applications DOE identified can be divided into two groups: rechargeable power tools and cordless rechargeable household appliances. The latter can be further subdivided into kitchen appliances (*e.g.*, can openers and electric knives), personal care appliances (*e.g.*, electric toothbrushes, shavers, and trimmers), and floor care appliances (*e.g.*, handheld vacuums and robotic vacuums).

Although there are many grades of cordless-rechargeable power tools—ranging from entry-level, do-it-yourself (DIY) tools intended for occasional homeowner use to high-end tools designed for frequent use by professionals—all can be purchased and used by consumers and, thus, are considered consumer products. However, it appears that very few, if any, professional-grade power tools use wall adapters. Instead, the charging base is plugged directly into mains. Thus, DOE only considered DIY tools.

DOE has included in the present determination analysis only those devices that are EPSs under Approach A (only those wall adapters that do not provide additional charge control functions are EPSs), with the understanding that the set of EPSs under Approach A is a subset of EPSs under Approach D (wall adapters with charge control functions are also EPSs). Thus, the analysis presents the minimum level of expected energy savings from a potential standard for these products. If DOE were to later adopt Approach D (*i.e.*, include coverage of wall adapters with charge control functions), the energy savings potential from standards for non-Class A EPSs would either increase or remain unchanged, but would not decrease below the current analysis' projected energy savings potential.

2. Shipments, Efficiency Distributions, and Market Growth

a. Overview

Based on its market analysis, DOE estimates that 11.3 million non-Class A EPSs are sold in the United States each year. For the national impact analysis, DOE also created forecasts of market size to 2032, the last year of sales in the analysis. Table II.1 summarizes DOE's estimates of market size and growth rate for each type of non-Class A EPS. These estimates are discussed in detail in the subsections that follow.

TABLE II.1—MARKET SIZE AND GROWTH PROSPECTS FOR NON-CLASS A EXTERNAL POWER SUPPLIES

Type of external power supply	Market size in 2008 (shipments per year)	Annual growth rate (percent)
Multiple-Voltage EPSs for Multifunction Devices	5,085,000	1
Multiple-Voltage EPSs for Xbox 360	4,000,000	3
High-Power EPSs	3,000	0
Medical EPSs	1,450,000	3
EPSs for Cordless Rechargeable Floor Care Appliances *	297,000	1
EPSs for Cordless Rechargeable Power Tools *	499,400	2
Total	11,334,400	.....

* DOE estimates that a maximum of 5 percent of the wall adapters that ship with products of this type are EPSs under Approach A.

Source: DOE estimated long-run growth rates by examining published shipments growth estimates (both past and projected) from the Consumer Electronics Association (CEA) (''U.S. Consumer Electronics Sales and Forecasts 2004–2009'', Consumer Electronics Association, July 2008), *Appliance Magazine* (''31st Annual Portrait of the U.S. Appliance Industry'', Appliance Magazine, September 2008) the Darnell Group (*External AC–DC Power Supplies Worldwide Forecasts, Third Edition.* Special estimate for North America, Darnell Group. May 2008), and others.

In addition to assessing the size of the market for each EPS type, DOE also assessed the efficiency of those EPSs. DOE defined four candidate standard levels (CSLs) for each EPS type and described market distribution in terms of efficiency across those levels (section II.C.4) DOE also created two base-case forecasts of efficiency distribution to 2032. These efficiency distributions describe the market in the absence of a standard and are required as a point of comparison in the national impact analysis. DOE's characterizations of present-day efficiency and its efficiency forecasts are also discussed in detail in the following subsections.

b. Multiple-Voltage External Power Supplies

EPSs for Multifunction Devices

In field research, DOE found that Hewlett-Packard (HP) manufactures all those MFDs that currently use multiple-voltage EPSs. In August 2008, DOE visited five retail outlets to determine which MFDs use multiple-voltage EPSs. DOE inspected 87 unique MFD models for sale at Best Buy, Circuit City, Office Depot, Staples, and Target. Of these 87 models, 16 used multiple-voltage EPSs; the remainder either had internal power supplies or used single-voltage EPSs. Many of these models were among the top-selling MFDs on Amazon.com, BestBuy.com, and CircuitCity.com.

In a written comment DOE received in October 2008 in connection with its Standby and Off Mode Test Procedure rulemaking, HP indicated that it plans to phase out multiple-voltage EPSs. It stated, ''About 45% of HP's total current usage of external-style power supplies is made up [multiple-voltage output power supplies (MVOPS)]. HP is planning to eliminate the use of MVOPS by early 2010. So our product designs will consist entirely of [single-voltage output power supplies].'' (Comment from Hewlett-Packard dated October 29, 2008. Docket Number EERE–2008–BT–

TP–0004. Comment #30.) Nevertheless, DOE is including multiple-voltage EPSs for MFDs in its analysis as some MFDs may continue to ship with multiple-voltage EPSs after 2010, or new applications with similar power requirements may be introduced.

Based on the available data, DOE estimated that 5,085,000 multiple-voltage EPSs for MFDs shipped for sale in the United States in 2008. Using data from Gartner Dataquest and the Consumer Electronics Association, DOE estimated that about 20 million inkjet printers and MFDs shipped in 2008. (Gartner Dataquest. ''Gartner Says United States Printer and MFP Shipments Declined 4 Percent in Second Quarter of 2006.'' August 2006. Last accessed February 27, 2009, *http://www.gartner.com/it/page.jsp?id=496184&format=print.*; Consumer Electronics Association. *U.S. Consumer Sales and Forecasts, 2004–2009.* July 2008. CEA: Arlington, VA.) According to Gartner Dataquest, HP controlled 56.4 percent of the inkjet printer/MFD market in the second quarter of 2006. DOE assumed HP's market share remained unchanged in 2008, resulting in shipments of 11.3 million HP inkjet printers and MFDs that year. As HP claimed that 45 percent of its EPSs are multiple-voltage EPSs, DOE estimated that 5,085,000 multiple-voltage EPSs for use with MFDs (45 percent of 11.3 million) were shipped in 2008. Given HP's stated intent to discontinue use of multiple-voltage EPSs, DOE assumed in its model a modest market growth rate of 1 percent annually.

DOE defined four CSLs for multiple-voltage EPSs for MFDs (Table II.2) DOE tested two multiple-voltage EPSs for MFDs, and neither unit tested above CSL 0. Thus, DOE assumed that all units on the market today are at CSL 0.

TABLE II.2—EFFICIENCY OF MULTIPLE-VOLTAGE EXTERNAL POWER SUPPLIES FOR MFDS

Candidate standard level (CSL)	Minimum active mode efficiency (percent)	Maximum no-load power (W)	Market share (percent)	Shipments
0. Current Level	81	0.50	100	5,085,000
1. Mid Level	86	0.45	0	0
2. High Level	90	0.31	0	0
3. Higher Level	91	0.20	0	0
All Levels			100	5,085,000

DOE estimated the market distribution across CSLs using test data from two units.

DOE examined two base case efficiency forecasts in its national impact analysis. In the first, efficiency does not improve during the period of analysis. In the second, which considered spillover effects from existing Class A EPS standards, non-Class A EPSs for MFDs gradually become more efficient throughout the period of analysis, with three-quarters of the market still at CSL 0 and the remainder at CSL 1 in 2032, the last year of sales.

EPSs for the Xbox 360

The NPD group estimates that since its release of the Xbox 360 in November 2005, more than 14 million units have been sold in the United States at an annual average of 4 million units. (NPD Group, reported from *http://www.joystiq.com* archives, last accessed February 28, 2009.) Because demand for a specific video game console is generally driven by novelty, the majority of shipments for a given model tend to occur early in its production cycle, with shipments generally decreasing over time as newer competing consoles or next-generation consoles become available. Therefore, DOE assumed a market size of 4 million units in the base year.

The market for video game consoles, including the Xbox 360, has grown considerably in recent years, and analysts expect the market to continue growing annually at between 5 percent (''U.S. Consumer Electronics Sales and Forecasts 2004–2009,'' Consumer Electronics Association, July 2008) and 10 percent (''External AC–DC Power Supplies Worldwide Forecasts, Third Edition.'' Special estimate for North America by the Darnell Group. May 2008.) Because the market for the Xbox 360 represents a subset of the console market, DOE developed a conservative growth forecast for this market of 3 percent annual growth.

DOE defined four CSLs for multiple-voltage EPSs for the Xbox 360 (Table II.3). An estimated 95 percent of units on the market today—those units sold with the Xbox 360—have average active-mode efficiency of 86 percent and consume 0.4 watts in no-load mode. Replacement units, which have poorer energy performance, comprise the remaining 5 percent of the market.

TABLE II.3—EFFICIENCY OF MULTIPLE-VOLTAGE EXTERNAL POWER SUPPLIES FOR XBOX 360

Candidate standard level (CSL)	Minimum active mode efficiency (percent)	Maximum no-load power W	Market share (percent)	Shipments
0. Generic Replacement	82	12.33	5	200,000
1. Manufacturer Provided	86	0.40	95	3,800,000
2. EU Qualified Level	86	0.30	0	0
3. Higher Level	89	0.30	0	0
All Levels			100	4,000,000

DOE estimates are based on test data and market share of generic replacements for the Xbox 360 EPS.

DOE examined two base-case efficiency forecasts in its national impact analysis. In the first, efficiency does not improve during the period of analysis. In the second, EPSs for the Xbox 360 gradually become more efficient. No units remain at CSL 0 in 2018, the sixth year after the standard is assumed to take effect. By 2032, one-quarter of the market has moved up to CSL 2, while the remainder is at CSL 1.

c. High Output Power External Power Supplies

Due to the highly specialized and relatively uncommon application of high power external power supplies, only about 30,000 units are in use. (Communication with the American Radio Relay League (August 2008). Despite the inherent limitations of high-power EPSs and the increasing use of internal power supplies for home amateur radio equipment setups, DOE expects the market for high-power EPSs to remain level throughout the analysis period based on input from the Amateur Radio Relay League. Given an average lifetime of 10 years and assuming that the same number of new units is put into service each year that is taken out of service, it follows that approximately 3,000 new units are put into service each year. (DOE interview with manufacturer, September 15, 2008.)

Table II.4 shows the four CSLs DOE defined for high-power EPSs. Line frequency EPSs account for an estimated 60 percent of the market; switched-mode EPSs comprise the remaining 40 percent. Line frequency EPSs historically have been preferred over switched-mode EPSs for amateur radio applications. However, they are slowly losing market share to switched-mode EPSs, which are considerably more efficient and much less expensive.

TABLE II.4—EFFICIENCY OF HIGH POWER EXTERNAL POWER SUPPLIES

Candidate standard level (CSL)	Minimum active mode efficiency (percent)	Maximum no-load power (W)	Market share (percent)	Shipments
0. Line Frequency	62	15.43	60	1,800
1. Switched Mode—Low	81	6.01	40	1,200
2. Switched Mode—Mid	84	1.50	0	0
3. Switched Mode—High	85	0.50	0	0
All Levels	.....	.....	100	3,000

DOE estimates are based on test data and manufacturer interviews.

In the first base-case efficiency forecast in its national impact analysis, efficiency does not improve during the period of analysis. In the second forecast, increased consumer preference for switched-mode high-power EPSs and spillover effects from existing Class A EPS standards lead to efficiency improvements in high-power EPSs. In this second forecast, high-power EPSs at CSL 2 are introduced in 2010 and gradually become more efficient throughout the period of analysis. By 2032, 38 percent of units remain at CSL 0, 40 percent are at CSL 1, and the remaining 22 percent have reached CSL 2.

d. External Power Supplies for Medical Devices

DOE examined those medical devices that are used in home-care settings and employ an EPS. An estimated 1.45 million of these devices shipped in 2008. (*External AC–DC Power Supplies Worldwide Forecasts, Third Edition.* Special estimate for North America by the Darnell Group. May 2008.) This market is expected to grow at an average rate of 11.4 percent per year between 2008 and 2013. The reasons for this growth are numerous. Over this period, the population aged 65 and older is expected to grow at 2.5 percent per year, compared to 0.75 percent per year for the population under age 65. (U.S. Population Projections.'' U.S. Census Bureau. 2008.) Demand for home care devices is increasing as the high cost of hospital stays encourages home care. (''DME Market of the Future.'' *Home Care Magazine.* July 1, 2000.) Patients' demands for greater portability are also driving an increase in the number of medical devices that can operate on battery power, some of which require wall adapters. (''Oxygen Concentrator Market Opportunities, Strategies, and Forecasts, 2005 to 2011.'' Wintergreen Research. 2005.) Finally, in some cases, medical device manufacturers can bring new products to market faster by using an EPS. (Personal communication. Phone call with Marco Gonzalez, Director of Supplier Management for Power. Avnet Inc. September 30, 2008.) This last trend in particular is increasing the number of medical devices using EPSs with output power greater than 90 watts. DOE forecasts the long term growth rate of medical device EPSs for consumer products to be 3 percent per year.

Additionally, the market for sleep therapy devices shows significant potential for growth. Based on available studies, DOE estimates that approximately 20 million Americans experience a moderate form of obstructive sleep apnea, which causes the afflicted to stop breathing momentarily during sleep. (''What is Sleep Apnea?'' National Heart Lung and Blood Institute Diseases and Conditions Index. *http://www.nhlbi.nih.gov/health/dci/Diseases/SleepApnea/SleepApnea_WhatIs.html.*) As the number of diagnoses of obstructive sleep apnea increases, demand for sleep therapy devices, one of the most common treatments for the condition, increases as well. DOE estimates that approximately 50 percent of sleep therapy devices, or about 1 million new units annually, are powered by EPSs. (Schirm, Jeffrey. Personal communication. Philips Electronics, NV. Phone call with Matthew Jones, D&R International. December 15, 2008.)

Nebulizers are commonly used to treat asthma and chronic obstructive pulmonary disease (COPD). An estimated 22 million Americans have been diagnosed with asthma, and an additional 12 million Americans have been diagnosed with COPD. (''What is Asthma?'' National Heart Lung and Blood Institute Diseases and Conditions Index. *http://www.nhlbi.nih.gov/health/dci/Diseases/Asthma/Asthma_WhatIs.html.;* ''What is COPD?'' National Heart Lung and Blood Institute Diseases and Conditions Index. *http://www.nhlbi.nih.gov/health/dci/Diseases/Copd/Copd_WhatIs.html.*) The prevalence of COPD is increasing as the population ages. The incidence of asthma has also increased over time. A June 2005 report, ''U.S. Nebulizers and Markets,'' indicates that portable nebulizers, which are more likely to

employ EPSs, have taken market share from non-portable units. (''U.S. Nebulizers and Markets.'' Frost & Sullivan. June, 2005.) From the available data, DOE estimates shipments of nebulizers to be 3 million units per year. However, DOE observed only a few examples that use EPSs. Accordingly, DOE assumes 15 percent of nebulizers, or 450,000 units per year, employ an EPS.

DOE did not consider the remaining three applications—ventilators, blood pressure monitors, and portable oxygen concentrators—further in the determination analysis. Very few ventilators or blood pressure monitors employ EPSs. Due to time constraints, DOE did not analyze or develop cost-efficiency curves for medical EPSs with high output power, so portable oxygen concentrators also were not included in the analysis. DOE may examine these products as part of a possible future standards rulemaking for medical EPSs.

DOE defined four CSLs for medical EPSs (Table II.5). DOE believes that roughly 66 percent of medical EPSs sold into the market today meet the Federal standard for Class A EPSs and could be labeled according to the international efficiency marking protocol with a ''IV''. The international efficiency marking protocol, initiated by the ENERGY STAR program and adopted by the U.S., Australia, China and Europe, provides a system for power supply manufacturers to designate the minimum efficiency performance of an external power supply, so that finished product manufacturers and government representatives can easily determine a unit's efficiency. Under this protocol manufacturers place a roman numeral from I (less efficient) to V (more efficient) on an EPS that corresponds to the EPS's efficiency. For instance, the mark of ''IV'' corresponds to the efficiency of the EISA 2007 standard. More information on the protocol can be found on the ENERGY STAR Web site at: *http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/International_Efficiency_Marking_Protocol.pdf.*

DOE based its view regarding the ability of medical EPSs to satisfy current Federal Class A standards enacted by Congress on available test results and its understanding that SL Power, a leading manufacturer of medical EPSs, is designing its EPSs for medical devices to meet the standard for Class A EPSs. Competing medical EPS manufacturers such as Elpac and GlobTek are also beginning to offer EPSs that meet the Class A standard. From this information, DOE assumes that 17 percent of units are less efficient and that the remaining 17 percent of units are more efficient.

TABLE II.5—EFFICIENCY OF MEDICAL EXTERNAL POWER SUPPLIES

Candidate standard level (CSL)	Minimum active mode efficiency (percent)	Maximum no-load power W	Market share (percent)	Shipments
0. Less than the II Mark	66	0.56	17	246,500
1. Meets the IV Mark	76	0.50	66	957,000
2. Meets the V Mark	80	0.30	17	246,500
3. Higher Level	85	0.15	0	0
All Levels			100	1,450,000

DOE estimated shipment distributions based on test results from six units.

In the first base-case efficiency forecast in the national impact analysis, efficiency does not improve during the period of analysis. In the second forecast, additional manufacturers adopt Class A EPS standards for medical device EPSs, which are projected to become gradually more efficient throughout the period of analysis. By 2032, 5 percent of units remain at CSL 0, 54 percent of the market is at CSL 1, and the remaining 41 percent of units are at CSL 2.

e. External Power Supplies for Certain Battery Chargers

As noted above, DOE identified several battery-powered applications that could potentially use non-Class A EPSs. Many of these applications were excluded from further consideration because DOE's analysis indicated they accounted for only a trivial amount of non-Class A EPS energy consumption. Battery-powered kitchen appliances were excluded because only a small number of units are sold annually. Personal care products were excluded because wall adapters used to power these products typically incorporate battery-charging circuitry and are unlikely to be EPSs under Approach A. Furthermore, personal care products that employ EPSs spend the vast majority of their time unplugged and stowed. (Comments on the Framework Document for Battery Chargers and External Power Supplies (74 FR 26816). Philips Electronics (Philips, No. 22 at p. 3).) Lawn mowers and yard trimmers were excluded because those models that have wall adapters are unlikely to be EPSs under Approach A. However, DOE did include two of these applications in the determination analysis: Floor care appliances and power tools.

Floor Care Appliances

DOE estimated that almost 6.5 million cordless rechargeable floor care appliances shipped in 2007. (Based on estimates of all stick vacuum and handheld vacuum shipments in ''31st Annual Portrait of the U.S. Appliance Industry,'' *Appliance Magazine,* September 2008.) DOE further estimates that approximately 90 percent or 5.9 million of those units use wall adapters. (Wayne Morris. Personal Communication. Association of Home Appliance Manufacturers. Letter to Victor Petrolati (DOE) and Michael Scholand (Navigant Consulting). August 11, 2006.) DOE lacks reliable data to determine what fraction of these wall adapters provide constant voltage and are therefore EPSs. In the absence of reliable data, DOE's preliminary estimate is that a maximum of 5 percent of these wall adapters, or 297,000 units per year, are EPSs (see Table II.6). DOE welcomes input on the accuracy of these estimates.

TABLE II.6—ANNUAL SHIPMENTS OF FLOOR CARE APPLIANCES

Type of floor care appliance	Total	Cordless rechargeable units		
		Total	With wall adapter	
			Total	Without charge control (EPS)
Handheld Vacuums	5,580,000	3,683,000	3,315,000	166,000
Stick Vacuums	4,500,000	1,800,000	1,620,000	81,000
Robotic Vacuums	1,000,000	1,000,000	1,000,000	50,000
All Types	11,080,000	6,483,000	5,935,000	297,000

Despite the stable market for floor care appliances, improvements in battery technology and the greater adoption of robotic vacuums may enable growth in the cordless rechargeable segment of the market. (''Robot Home Vacuum Cleaning, Cooking, Pool Cleaning, and Lawn Mowing Market Strategy, Market Shares, and Market Forecasts, 2008–2014.'' Electronics.ca Publications. January 2008.) Thus, DOE forecasts 1 percent annual growth in the size of the market for cordless rechargeable floor care appliances.

DOE defined four CSLs for EPSs that power the BCs of cordless rechargeable floor care appliances (Table II.7). Based on test data from 12 EPS units, DOE believes that three-quarters of EPSs for floor care appliances sold today meet or exceed the Federal standard for Class A EPSs and could be labeled according to the international efficiency marking protocol with a ''IV'' or ''V.'' DOE assumes that 8 percent of these units are somewhat less efficient, but could still be labeled with a ''II,'' while the remaining 17 percent of units are even less efficient.

TABLE II.7—EFFICIENCY OF EXTERNAL POWER SUPPLIES FOR CORDLESS RECHARGEABLE FLOOR CARE APPLIANCES

Candidate standard level (CSL)	Minimum active mode efficiency (percent)	Maximum no-load power (W)	Market share (percent)	Shipments
0. Less than the II Mark	24	1.85	17	50,490
1. Meets the II Mark	45	0.75	8	23,760
2. Meets the IV Mark	55	0.50	58	172,260
3. Meets the V Mark	66	0.30	17	50,490
All Levels			100	297,000

DOE estimated market distributions based on test data of 12 Class A EPSs.

In the first base-case efficiency forecast in the national impact analysis, efficiency does not improve during the period of analysis. In the second forecast, EPSs for BCs that power cordless rechargeable floor care appliances gradually become more efficient throughout the period of analysis. By 2032, 5 percent of units remain at CSL 0, 20 percent of units are at CSL 1, 52 percent of units are at CSL 2, and the remaining 23 percent of units are at CSL 3.

DIY Power Tools

DOE estimates that 499,400 wall adapters without charge control (EPSs) are sold annually for use with rechargeable power tools. This is a preliminary estimate based on the assumptions shown in Table II.8. As noted above, professional tools, which DOE assumed account for 50 percent of shipments, do not employ wall adapters. The remaining 50 percent, the DIY tools, can be divided into those with a detachable battery and those with an integral battery. DOE assumed that the former account for 30 percent and the latter 20 percent of the market. Based on data obtained from the Power Tool Institute, DOE estimated that 80 percent of DIY tools with detachable batteries and 100 percent of DIY tools with integral batteries employed wall adapters. DOE's preliminary estimate is that a maximum of 5 percent of those 9,990,000 wall adapters lack charge control and, thus, are considered EPSs under Approach A.

TABLE II.8—SHIPMENTS OF CORDLESS RECHARGEABLE POWER TOOLS

Type of power tool	Percent of shipments	Annual unit shipments	With wall adapter (percent)	With wall adapter	Wall adapter without charge control (percent)	Wall adapter without charge control
Professional	50	11,350,000	0			0
DIY with Detachable Battery	30	6,810,000	80	5,450,000	5	272,400
DIY with Integral Battery	20	4,540,000	100	4,540,000	5	227,000
All Tools	100	22,700,000		9,990,000		499,400

According to forecasts from the Darnell Group, the market for cordless rechargeable power tools will continue to grow at an average annual rate of 10.6 percent until 2013. This growth is attributed to a falling cost for increasingly powerful and flexible tools. DOE believes that short-term growth will be tempered by the slowdown in the construction and remodeling industries. Given these factors, DOE estimates long-term shipments growth of 2 percent per year.

DOE defined four CSLs for EPSs that power the BCs of cordless rechargeable power tools (Table II.9). Based on test data from 12 EPS units, DOE believes that three-quarters of power tool EPSs sold into the market today meet or exceed the Federal standard for Class A EPSs and could be labeled according to the international efficiency marking protocol with a ''IV'' or ''V.'' DOE assumes that 8 percent of units are somewhat less efficient, but could still be labeled with a ''II,'' while the remaining 17 percent of units are even less efficient.

TABLE II.9—EFFICIENCY OF EXTERNAL POWER SUPPLIES FOR RECHARGEABLE POWER TOOLS

Candidate standard level (CSL)	Minimum active mode efficiency (percent)	Maximum no-load power (W)	Market share (percent)	Shipments
0. Less than the II Mark	38	1.85	17	84,898
1. Meets the II Mark	56	0.75	8	39,952
2. Meets the IV Mark	64	0.50	17	84,898
3. Meets the V Mark	72	0.30	58	289,652
All Levels			100	499,400

DOE estimated market distributions based on test data of 12 EPSs.

In the first base-case efficiency forecast in the national impact analysis, efficiency does not improve during the period of analysis. In the second forecast, the less efficient EPSs for BCs that power cordless rechargeable power tools gradually become more efficient throughout the period of analysis. By 2032, 5 percent of units remain at CSL 0 and the market for units at CSL 1 increases to 20 percent. EPSs at CSL 2 and CSL 3 continue to comprise 17 percent and 58 percent of the market, respectively.

3. Product Lifetimes

a. Overview

DOE considers the lifetime of an EPS to be from the moment it is purchased for end-use up until the time when it is permanently retired from service. Because the typical EPS is purchased for use with a single associated application, DOE assumes that the EPS will remain in service for as long as the application does. High-power EPSs are the exception, as they are purchased separately, not as part of another end-use consumer product. Table II.10 shows the values for EPS lifetime that DOE used in its draft analysis. Where there are multiple applications with different lifetimes for a single type of EPS, DOE calculated a weighted-average lifetime for that EPS type using the applications' shipment volumes as weights. Additional detail on each EPS type is given in the subsections below. DOE seeks comments on its assumptions for product lifetime.

TABLE II.10—LIFETIME OF EXTERNAL POWER SUPPLIES BY TYPE

Type of EPS	Average lifetime years
Multiple-Voltage EPSs for MFDs	5
Multiple-Voltage EPSs for Xbox 360	5
High-Power EPSs	10
Medical EPSs	8
Wall Adapters for Certain Battery Chargers	5

DOE estimates are based on numerous sources. See subsections below for detail.

b. Multiple-Voltage External Power Supplies

For the Xbox 360, DOE assumed an average console lifetime of 5 years, which is roughly the time between console generations. While consoles, especially modern consoles, may have extremely long functional lifetimes, this may differ significantly from the length of time they will actually be used. When a new console is introduced, the industry stops developing and releasing new games for that console's predecessor. Consumers then begin retiring the older system in favor of the new one. Thus, while the console may in fact remain functional, it will no longer remain in use.

Based on availability dates for video game consoles from the current leaders in the console market (Nintendo, Sony, and Microsoft), DOE determined an average period of 5 years between generations of consoles. Table II.11 lists these consoles by manufacturer. In each line of consoles, DOE assumed that the effective run of a console ended upon release of the next generation of console. In many cases, the older consoles are still available for purchase, and some overlap will occur, as consumers continue to use older systems. However, DOE anticipates that within 2 years of release, the majority of consumers will prefer to use newer consoles. Therefore, DOE considers an estimate of 5 years to be a suitable value for the average effective lifetime for video game consoles, including the Xbox 360 and any subsequent console that may use a non-Class A EPS.

TABLE II.11—VIDEO GAME CONSOLE RELEASE DATES BY MANUFACTURER

Manufacturer	Console	North American release date	Years until subsequent release
Nintendo	Nintendo	1985	6.
	Super Nintendo	1991	5.
	Nintendo 64	1996	5.
	Game Cube	2001	5.

TABLE II.11—VIDEO GAME CONSOLE RELEASE DATES BY MANUFACTURER—Continued

Manufacturer	Console	North American release date	Years until subsequent release
	Wii	2006	Currently available.
Sony	Playstation	1995	5.
	Playstation 2	2000	6.
	Playstation 3	2006	Currently available.
Microsoft	Xbox	2001	4.
	Xbox 360	2005	Currently available.

Source: *http://www.thegameconsole.com/; http://www.gamespot.com/gamespot/features/video/hov/.*

In a recent interview, Robbie Bach, President of Entertainment and Devices Division at Microsoft, stated that, ''The life cycle for this generation of consoles—and I'm not just talking about Xbox, I'd include Wii and PS3 as well—is probably going to be a little longer than previous generations.'' (*http://xbox.joystiq.com/2009/01/12/xbox-360-life-cycle-to-be-a-little-longer-than-previous-generat*) It is unclear whether this statement would apply only to this particular generation of consoles, or to all future console development cycles generally. In light of this uncertainty, DOE considers 5 years to be an appropriate estimate for console lifetime.

Multifunction devices are also assumed to have an average useful lifetime of 5 years, according to *Appliance Magazine.* (''31st Annual Portrait of the U.S. Appliance Industry,'' Appliance Magazine, September 2008.)

c. High Output Power External Power Supplies

As described above, DOE normally calculates the life of an EPS based on the end-use application that the EPS is intended to power. High-power EPSs, however, are sold separately from their end-use applications. DOE cannot use the lifetime of the end-use application as a proxy, as the EPS may power different and multiple applications. Therefore, DOE based the lifetime of these EPSs on the functional lifetime of the EPS itself. Based on input from industry experts, DOE estimates that these EPSs have an average functional lifetime of 10 years. (Based on interviews conducted with the American Radio Relay League (August 2008) and Astron (December 2008).)

d. External Power Supplies for Medical Devices

DOE assumed an average lifetime of 8 years for medical device EPSs. According to a representative of SL Power, medical devices in general have an average lifetime of 11 years. (Tim Cassidy, SL Power. Committee Workshop before the California Energy Resources Conservation and Development Commission meeting transcript. 1/30/06 California Energy Commission.) However, this determination analysis focused on medical devices for use in home care settings, which generally have shorter lifetimes. Medicare guidelines state that durable medical equipment must have a lifetime of at least 5 years before a replacement is eligible to receive reimbursement. (Centers for Medicare and Medicaid Services. CMS Manual System Pub. 100–02 Medicare Benefit Policy, Transmittal 30, Change Request 3693. February 18, 2005.) The length of product warranties and comments from users in online discussion forums suggest that sleep therapy devices can last 7 to 12 years before replacement is necessary. (American Sleep Apnea Association. Apnea Support Forum discussion amongst users on sleep therapy device lifetimes. January 25, 2007. *http://www.apneasupport.org/about8124.html.*) Given the similarities in form and function, DOE assumes nebulizers have a comparable lifespan.

e. External Power Supplies for Certain Battery Chargers

Based on input from the Association of Home Appliance Manufacturers and the Power Tool Institute, DOE estimated an average lifetime of 5 years for EPSs for battery chargers for floor care appliances and DIY power tools. (Data for floor care products from ''31st Annual Portrait of the U.S. Appliance Industry,'' *Appliance Magazine,* September 2008. Data for power tools courtesy of the Power Tool Institute.)

4. Distribution Channels and Markups

In the LCC, payback period (PBP), and national impacts analyses, DOE compared the energy cost savings from standards with changes in purchase price due to increases in initial cost resulting from standards. DOE estimated the incremental consumer cost associated with setting a standard at CSLs 1–4.

To obtain end-user (consumer) product prices, DOE started by estimating the efficiency-related materials cost (ERMC) for each CSL. See section II.B.5 for a discussion of this cost. DOE marked up these costs to obtain factory price or manufacturer selling price (MSP) estimates, and then studied the distribution value chain for EPSs moving from manufacturer to end-user. From that analysis, which included volume estimates and typical markups applied by actors in the distribution chain, DOE calculated a manufacturer-to-retail markup to convert MSP estimates to retail price estimates. DOE then applied a sales tax estimate to the retail price estimates to arrive at end-user product prices.

Consumer product manufacturers, or original equipment manufacturers (OEMs), initiate the manufacture of most non-Class A EPSs. An OEM contracts with an EPS manufacturer to supply an EPS that meets the requirements of the OEM's consumer product. The EPS manufacturer then designs and assembles the device from component parts (*e.g.,* transformers, diodes, capacitors, semiconductors) made by various component manufacturers. The completed EPS is then sent to the OEM to be packaged and sold. While this process may be initially more expensive than using stock, off-the-shelf EPSs, OEMs prefer it since the EPS will then exactly fit the requirements of the intended application and the up-front design costs can be amortized over a large volume of sales. (Collon Lee. Personal Communication. Astec Power, Carlsbad, CA. February 16, 2006.) In addition, due to the special requirements of battery chargers and the design and registration process for medical devices, stock EPSs are not always available to meet the power requirements of these applications.

Table II.12 shows total markups for each type of non-Class A EPS. The total markup is the ratio of the after-tax consumer price to the ERMC or after-tax consumer price as a multiple of ERMC. The specific distribution channels and individual markups DOE used in its analysis for each type of non-Class A

EPS are discussed in section 1.2 of the TSD.

TABLE II.12—MARKUPS FOR NON-CLASS A EXTERNAL POWER SUPPLIES

Type of EPS	Total dollar markup (after-tax consumer price as a multiple of ERMC) $
Multiple-Voltage EPSs for MFDs	3.18
Multiple-Voltage EPSs for Xbox 360	3.15
High-Power EPSs	1.80
Medical EPSs	3.60
Wall Adapters for Certain Battery Chargers: Floor Care Appliances	3.69
Wall Adapters for Certain Battery Chargers: DIY Power Tools	4.14

5. Interested Parties

DOE has identified several organizations—mainly trade associations and energy efficiency advocates—that may have an interest in this determination. Energy efficiency advocacy organizations with a demonstrated interest in DOE's rulemakings on BCs and EPSs include the Appliance Standards Awareness Project, the American Council for an Energy-Efficient Economy, Earthjustice, Ecos Consulting, the Natural Resources Defense Council, and Pacific Gas and Electric Company, among others. Several trade associations with member companies manufacture non-Class A EPSs or the consumer products they power. Section 1.3 of the TSD lists some of these associations. Table 1.5 of the TSD identifies the types of non-Class A EPSs in which each group is likely to have an interest. Table 1.6 gives examples of each association's member companies.

6. Existing Energy Efficiency Programs

DOE has identified both voluntary and regulatory energy efficiency programs that may affect the efficiency of non-Class A EPSs sold in the United States. The five most important programs, summarized in Table II.13, include three domestic programs and two foreign programs. The three domestic programs are the Federal mandatory standard for Class A EPSs, the U.S. Environmental Protection Agency's voluntary ENERGY STAR standard for EPSs, and California's mandatory standard for so-called ''State Regulated EPSs.'' Among the many foreign programs, two from the European Union are particularly noteworthy—the ''Eco-design of Energy-using Products Initiative, Directive 2005/32/EC'' and the ''Code of Conduct on Efficiency of External Power Supplies, EU Standby Initiative.'' See section 1.4 of the TSD for a discussion of these programs.

TABLE II.13—SELECTED ENERGY EFFICIENCY PROGRAMS FOR EXTERNAL POWER SUPPLIES

Country/region	Authority	Program/institution
United States	Mandatory	Federal standard for Class A EPSs.
United States	Voluntary	ENERGY STAR for EPSs.
California	Mandatory	State standard for ''State Regulated EPSs''.
European Union	Mandatory	Eco-design of Energy-using Products (EuP) Initiative, Directive 2005/32/EC.
European Union	Voluntary	Code of Conduct on Efficiency of External Power Supplies, EU Standby Initiative.

B. Technology Assessment

1. Introduction

This technology assessment examines the technology behind the design of non-Class A EPSs and focuses on the components and subsystems that have the biggest impact on energy efficiency. (Note that the term ''technology assessment'' is different from ''technical support document.'' The TSD is the supporting document for this notice on a proposed determination for non-Class A EPSs. The technology assessment is a section within both this notice and the supporting TSD.)

a. Definitions

DOE is conducting a determination analysis for non-Class A external power supplies defined by EPCA, as amended by EPACT 2005. EPCA defines an external power supply as ''an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product'' (42 U.S.C. 6291(36)(A)) but section 301 of EISA 2007 further amended this definition by creating a subset of EPSs called Class A External Power Supplies. EISA 2007 defined this subset as those external power supplies that, in addition to meeting several other requirements common to all external power supplies, are ''able to convert to only 1 AC or DC output voltage at a time'' and that have ''nameplate output power that is less than or equal to 250 watts.'' (42 U.S.C. 6291(36)(C)(i)) EPCA excludes an EPS from Class A if it ''requires Federal Food and Drug Administration listing and approval as a medical device'' or if it ''powers the charger of a detachable battery pack or charges the battery of a product that is fully or primarily motor operated.'' (42 U.S.C. 6291(36)(C)(ii)) This determination analysis only considers non-Class A external power supplies.

b. The Role of Power Converters

EPSs are power converters that support consumer products; hence, their operation and design is primarily governed by the consumer products they support (Figure II.1). Generally, an EPS supplies power at a constant output voltage and is interchangeable among consumer products with similar power requirements.

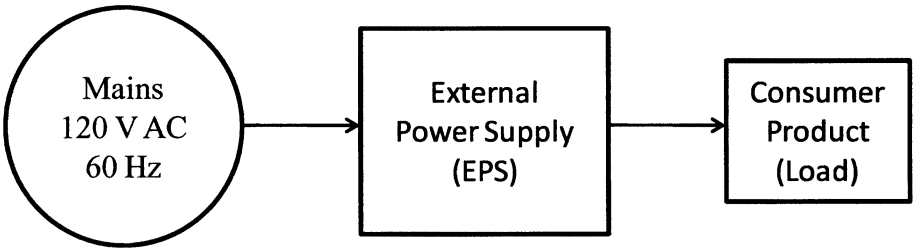


Figure II.1 Block Diagram of Power Flowing Through an External Power Supply

c. Functionality and Modes of Operation

The technology assessment begins by analyzing the modes in which EPSs operate and their functionality. Of these modes, active mode has the largest effect on the power converter's size and efficiency because the maximum amount of power passes through the EPS in active mode. In no-load mode the power converter is disconnected from the load; however, no-load power consumption is indicative of power consumption at low load. In each operational mode, the EPS is designed to provide certain functionality to the consumer product.

d. EPS Circuit Design

This section discusses how EPSs are designed, with specific consideration to the functionality requirements of the consumer applications that they power.

e. Efficiency Metrics

This section discusses the metrics used to measure and compare EPS efficiency.

f. Product Classes

This section discusses how DOE groups products into ''product classes'' for different energy-efficiency standards when a product's characteristics constrain its energy efficiency.

g. Technology Options for Efficiency Improvement

The final section of the technology assessment evaluates technology options for improving energy efficiency. DOE analyzed the components in the power converter that consume significant power, such as transformers, or influence power consumption of other components, such as integrated circuits (ICs). By identifying sources of power loss and possible methods for improvement, the technology assessment discusses technology options that would allow a manufacturer to design a power converter with similar design characteristics to have the same functionality but with improved efficiency.

h. Overlapping Terminology

The technology assessment discusses external power supplies with terminology that occasionally overlaps. This is because EPSs are used with a broad array of products with use in many different applications. In particular, ''class'' is discussed in this document in four different contexts:

- ''Class A'' and ''non-Class A.'' EPCA defines a subset of external power supplies as ''Class A'' based on criteria discussed in section II.B.1.a. External power supplies outside of the definition of Class A, are termed ''non-Class A.''
- ''Product class.'' DOE uses ''product class'' as a term of art in conducting energy efficiency rulemakings to delineate groups of products (discussed further in section II.B.4).
- ''Class I'' and ''Class II.'' Safety rating agencies use Class I and II to differentiate among products with and without a connection to ground, respectively. This issue particularly affects medical EPSs, discussed in the TSD.
- ''Class B digital devices.'' The Federal Communications Commission (FCC) regulates products for electromagnetic interference based on whether the product is used for non-residential or residential purposes, designated as Class A or Class B, respectively. (For information regarding the FCC definitions of Class A and Class B digital devices, see *http://www.arrl.org/tis/info/part15.html#Definitions*.) Electromagnetic interference particularly affects high-power EPSs, discussed in the TSD.

2. Modes of Operation

a. Active Mode

For the determination analysis, DOE used the definition of active mode codified in 10 CFR part 430, subpart B, appendix Z: ''Active mode is the mode of operation when the external power supply is connected to the main electricity supply and the output is connected to a load.''

In this mode, EPS efficiency is the conversion efficiency when the load draws some or all of the maximum rated output power of the EPS. In addition to providing that output power, the EPS also consumes power due to internal losses as well as overhead circuitry. The amount of power the EPS consumes varies with the power demands of the load; together, those two parameters define the EPS's efficiency at a particular loading point:

$$\eta_{EPS} = \frac{P_{out}}{P_{in}} = \frac{P_{out}}{P_{out} + P_{EPS_consumption}} \qquad \text{Eq. II.1}$$

Where η_{EPS} is the EPS efficiency,
$P_{EPS_consumption}$ is the power consumed by the external power supply itself,
P_{in} is the power from mains into the external power supply, and
P_{out} is the power out of the external power supply to the consumer product.

EPS active mode efficiency varies with the amount of output power (Figure II.2). Typically, EPSs are inefficient at low load (0 percent to 20 percent of maximum rated output power of the EPS) and more efficient at larger loads (between 20 and 100 percent of maximum rated output power), which occurs when the consumer product is fully functional and demanding more power. The lower efficiency at lower output current is due to the proportionally larger power consumption of internal EPS components relative to output power. At higher power, EPS losses are

proportionally not as great and therefore have less impact on EPS efficiency. The EPS test procedure evaluates active mode conversion efficiency at four loading points: 25 percent, 50 percent, 75 percent, and 100 percent of maximum rated output power, which captures a general picture of EPS efficiency. Figure II.2 shows an example of a typical efficiency curve for an EPS in active mode.

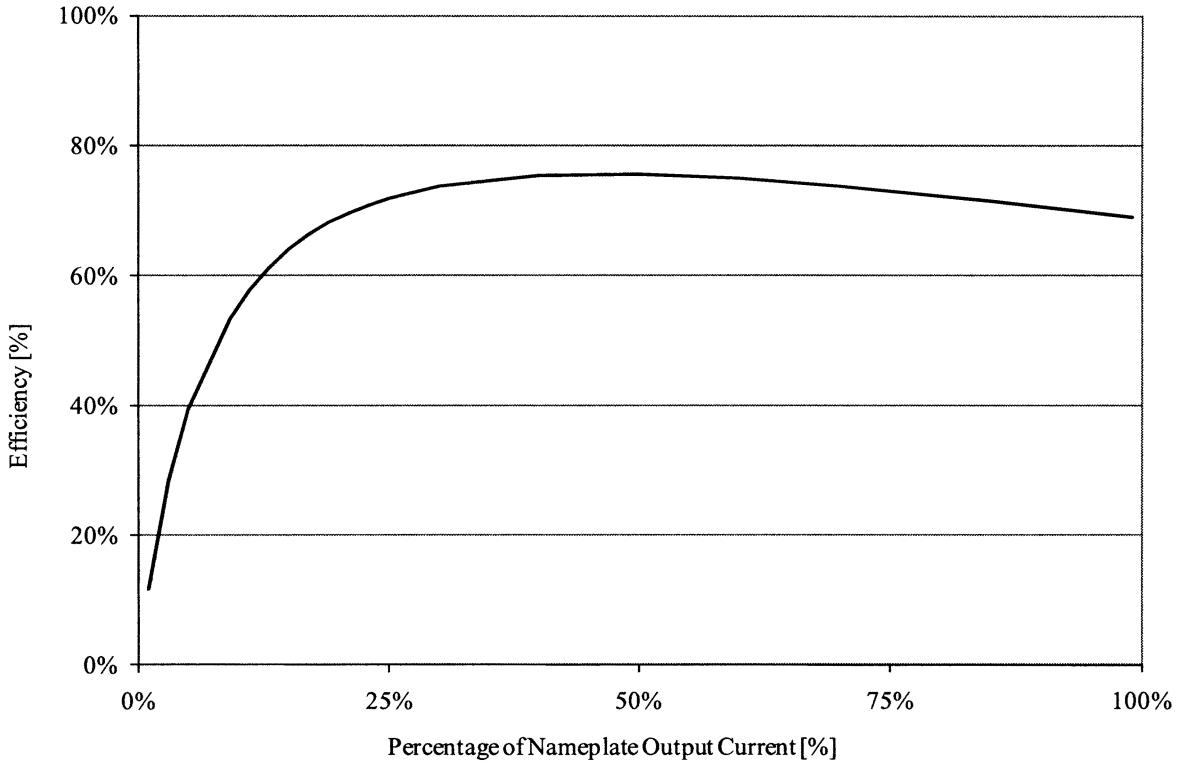


Figure II.2 Example of an Efficiency Curve of a Single-Voltage EPS in Active Mode

b. No-Load Mode

For the determination analysis, DOE used the definition of no-load mode codified in 10 CFR part 430, subpart B, appendix Z: ''No load mode means the mode of operation when the external power supply is connected to the main electricity supply and the output is not connected to a load.''

EPS consumption in no-load is a measure of EPS internal power consumption, since the EPS is not connected to the load. However, the EPS might provide functionality. For example, certain consumer products may require the EPS to deliver output power within moments of being connected. Thus, the EPS may consume power to provide the useful function of reduced start-up time. Nonetheless, EPS power consumption can still be low (less than 1 watt) in no-load mode for non-Class A EPSs.

c. Standby and Off Modes

As directed by EISA 2007, DOE amended its test procedures for battery chargers and external power supplies to address standby and off modes on March 27, 2009. (74 FR 13318) In those test procedures, DOE defines standby mode and off mode. Standby mode is the condition in which the EPS is in no-load mode and, with products equipped with manual on-off switches, all such switches are turned on. Off mode is also only applicable to those EPSs that have a manual on-off switch, and is defined as the time when the EPS is (1) connected to the main electricity supply; (2) the output is not connected to any load; and (3) all manual on-off switches are turned off.

3. Functionality and Circuit Designs of Non-Class A EPSs

Non-Class A EPSs are designed to provide certain types of functionality, for which they have particular circuit designs. The TSD discusses these aspects of non-Class A EPSs in detail.

4. Product Classes

DOE divides covered products into classes by the type of energy used, the capacity of the product, and any other performance-related feature that justifies different standard levels, such as features affecting consumer utility. (42 U.S.C. 6295(q)) For example, when compared with a standard device, a device with additional functionality that provides extra utility to the consumer would be grouped in a separate product class if the additional functionality affects its efficiency. DOE then conducts its analysis and considers establishing or amending standards to provide separate standard levels for each product class. Because output power and output voltage have the largest impact on achievable EPS efficiency, DOE considered both criteria when developing EPS product classes for the determination analysis.

a. Product Class Distinctions for Multiple-Voltage EPSs

There is a small market for multiple-voltage EPSs, which are primarily used in printing and video game console applications. Accordingly, DOE is considering dividing multiple-voltage EPSs into two product classes, listed in

Table II.14, to account for these separate applications.

TABLE II.14—PRODUCT CLASSES FOR MULTIPLE-VOLTAGE EPSS

	Nameplate output power	
	< 100 watts	≥100 watts
Product Class	Multiple-Voltage Product Class 1	Multiple-Voltage Product Class 2.

Multiple-Voltage Product Class 1 relates to multiple-voltage EPSs for printing applications. These EPSs tend to have an even distribution of power between the outputs. Multiple-Voltage Product Class 2 relates to multiple-voltage EPSs for video game applications. These EPSs tend to have an uneven distribution of power between the outputs, where one output accounts for most of the output power. These product classes also have different nameplate output power ratings. Multiple-Voltage Product Class 1 is representative of units that are less than 100 watts. Multiple-Voltage Product Class 2 is representative of units that are greater than or equal to 100 watts.

b. Product Class Distinctions for High-Power EPSs

There is a small market for high-power EPSs which have one primary application: ham radios. There are few technical differences among these EPSs that affect efficiency, none of which are significant for the current analysis. Therefore, DOE is considering placing high-power EPSs into one product class, listed in Table II.15.

TABLE II.15—PRODUCT CLASSES FOR HIGH-POWER EPSS

	Nameplate output power
	> 250 watts
Product Class	High Power Product Class 1.

High-Power Product Class 1 relates to high-power EPSs for ham radios, which all have nameplate output voltage at 13.8 volts. Unlike higher-power Class A EPSs, High-Power Product Class 1 EPSs typically require more overhead circuitry. These EPSs often include two integrated circuits; Class A EPSs often have one. The second IC generally becomes necessary for EPSs around 170 watts.

c. Product Class Distinctions for Medical EPSs

Both medical and Class A EPSs have diverse markets with many end-use applications. The primary difference is that medical EPSs have additional safety requirements that result in higher costs. However, those requirements have a negligible effect on their efficiency. Therefore, DOE is considering placing medical EPSs in the same product classes as Class A EPSs, listed in Table II.16.

TABLE II.16—PRODUCT CLASSES FOR MEDICAL EPSS

Nameplate output voltage	Nameplate output power		
	<4 watts	4–60 watts	>60 watts
≤12 volts	Medical Product Class 1	Medical Product Class 2	Medical Product Class 3.
>12 volts	Medical Product Class 4	Medical Product Class 5	Medical Product Class 6.

Two variables in combination define A product class for medical EPSs: nameplate output voltage and nameplate output power. There are two variations on nameplate output voltage and three variations on nameplate output power, which results in six total product classes (Table III.16).

DOE is considering criteria for product classes for medical EPSs. Output power and output voltage are the leading criteria, as with Class A EPSs. Additional criteria are specific to medical EPSs, including the number of output voltages and output cable length. DOE is aware of very few medical EPSs with multiple-voltage outputs (section II.B.5) and is not considering a separate product class for these EPSs at this time. Medical device EPSs used with liquids may require long output cables for safety reasons, which will constrain EPS efficiency because longer cables have higher resistance and are therefore less efficient.

d. Product Class Distinctions for EPSs for BCs

EPSs for BCs and Class A EPSs also have diverse markets with many end-use applications. The primary difference is that EPSs for BCs are specifically used with battery-charging applications. However, under Approach A, EPSs for BCs are viewed as electrically equivalent to Class A EPSs. Therefore, DOE is considering dividing EPSs for BCs into the same product classes as Class A EPSs, listed in Table II.17.

TABLE II.17—PRODUCT CLASSES FOR EPSS FOR BCS

Nameplate output voltage	Nameplate output power		
	<4 watts	4–60 watts	>60 watts
≤12 volts	EPS for BC Product Class 1	EPS for BC Product Class 2	EPS for BC Product Class 3.
>12 volts	EPS for BC Product Class 4	EPS for BC Product Class 5	EPS for BC Product Class 6.

Similar to medical EPSs, two variables in combination define six product classes for EPSs for BCs: Nameplate output voltage and nameplate output power.

5. Technology Options for Improving Energy Efficiency

DOE considered several technology options that may improve the efficiency of Class A and non-Class A EPSs (discussed in further detail in the TSD):

Improved Transformers. In line-frequency EPSs, the transformer has the largest effect on efficiency. Transformer efficiency can be improved by using cores and windings with lower-loss material, such as lower electrical resistance, or by adding extra material.

Switched-Mode Power Supply. Line-frequency EPSs often use linear regulators to maintain a constant output voltage. By using a switched-mode circuit architecture, a designer can limit both losses associated with the transformer and the regulator. The differences between the two EPS types are discussed in the TSD.

Low-Power Integrated Circuits. The efficiency of the EPS can be further improved by substituting low-power IC controllers to drive the switching transistor, which can switch more efficiently in active mode and reduce power consumption in no-load mode. For instance, the IC can turn off its start-up current (sourced from the primary side of the power supply) once the output voltage is stable. This increases conversion efficiency and decreases no-load power consumption. In addition, when in no-load mode, the IC can turn off the switching transistor for extended periods of time (termed ''cycle-skipping'').

Multi-Mode Integrated Circuits. These ICs combine current limiting, temperature limiting, over-voltage, and under-voltage functions, which allow the controller to adjust to a wide range of loads. At full loads, the IC works in a high frequency pulse-width modulation mode. As the load decreases, the IC can shift into a variable frequency mode and at no load the IC can use a fixed peak current, multi-cycle modulation scheme.

Schottky Diodes and Synchronous Rectification. Both line-frequency and switched-mode EPSs use diodes to rectify output voltage. Schottky diodes and synchronous rectification can also replace standard diodes to reduce rectification losses, which are increasingly significant at low output voltage. Schottky diodes have a lower voltage drop than standard diodes and thus result in less power loss. Synchronous rectification replaces the diodes with a transistor for even less power loss.

Low-Loss Transistors. The switching transistor dissipates energy due to its drain-to-source resistance (R_{DS_ON}) when the current flows through the transistor to the transformer. Using transistors with low R_{DS_ON} can reduce this loss.

Resonant Switching. In addition to reducing the R_{DS_ON} of the transistor, power consumption can be lowered further by the IC controller decreasing switching voltage transients (the sharp changes in voltage that come from opening or closing the circuit with a transistor) through zero-voltage or zero-current switching. The power consumption of the transistor (as it switches from on to off or vice versa) is influenced by the product of the transitional voltage across the R_{DS_ON} and the transitional current flowing through it. An IC can control the timing of switching to minimize the presence of significant current and voltage at the same time, although some components are typically needed in addition to the IC to achieve the desired resonance or quasi resonance.

Resonant (''Lossless'') Snubbers. In switched-mode EPSs, a common snubber protects the switching transistor from the high voltage spike that occurs after the transistor turns off by dissipating that power as heat. A resonant or lossless snubber recycles that energy rather than dissipating it.

C. Engineering Analysis

1. Introduction

The purpose of this engineering analysis is to determine the relationship between a non-Class A EPS's efficiency and its ERMC. (The efficiency-related materials cost includes all of the efficiency-related raw materials listed in the bill of materials but not the direct labor and overhead needed to create the final product. The materials cost forms the basis for the price consumers eventually pay.) This relationship serves as the basis for the underlying costs and benefits to individual consumers (section II.B) and the Nation (life-cycle cost analysis and national impacts analysis). The output of the engineering analysis provides the ERMC at selected, discrete levels of efficiency for six EPSs ''representative'' of non-Class A EPSs. This section details the development of this analysis and includes descriptions of the analysis structure, inputs, and outputs with supporting material in the TSD. DOE welcomes comments from interested parties on all aspects of this analysis.

To develop this analysis, DOE gathered data by interviewing manufacturers, conducting independent testing and research, and commissioning EPS teardowns. Through interviews, manufacturers provided information on the relative popularity of EPS models and the cost of increasing their efficiency. To validate the information provided by manufacturers, DOE performed its own market research and testing. To independently establish the cost of some of the tested units, DOE contracted iSuppli Corp., an industry leader in the field of electronics cost estimation. For a detailed discussion of these data sources, see section II.C.2.

In section II.C.3, DOE presents representative product classes and representative units, which allows DOE to focus its analysis on a few specific power converters and subsequently transfer the results to all units. DOE began the engineering analysis by identifying the representative product classes and selecting one representative unit for analysis from each of the representative product classes. The representative product classes are a subset of the product classes identified in section II.B. The representative units, in turn, are theoretical idealized models of popular or typical devices within the representative product classes.

Although the efficiency of power converters in the market forms an almost continuous spectrum, DOE focused its analysis at select CSLs (section II.C.4). In the engineering analysis, DOE examined the cost of meeting each CSL for each representative unit. The resulting relationship was termed an ''engineering curve'' or ''cost-efficiency curve.'' The outputs of this analysis are the cost-efficiency points that define those curves and are presented in section II.C.6.

2. Data Sources

a. Manufacturer Interviews

In 2008, on behalf of DOE, Navigant Consulting, Inc. (Navigant Consulting) interviewed nine manufacturers to obtain data on what makes non-Class A EPSs unique in terms of market and technical requirements as well as their possible efficiencies and resultant costs. At the request of some manufacturers, Navigant Consulting entered into non-disclosure agreements whereby it can present to DOE general information about the non-Class A EPS market and technology, but no confidential data specific to any individual manufacturer. These interviews enabled Navigant Consulting to obtain general information about the non-Class A EPS market and

technology to conduct the analysis but without attributing any particular data to an individual manufacturer. The interviews were generally structured to elicit information similar to the information DOE presents in the TSD. DOE continues to seek input from interested parties regarding all aspects of the rulemaking, cost and efficiency data in particular.

Because of the limited markets for multiple-voltage EPSs, Navigant Consulting identified two manufacturers in addition to Microsoft that produce EPSs for the Xbox 360, but they had limited availability for interviews. Although Microsoft speculated on two discrete steps to improve the efficiency of multiple-voltage EPSs and their costs, none of the manufacturers provided detailed cost-efficiency points for a wide range of efficiencies. For the other application of multiple-voltage EPSs, multiple-function devices, both an OEM and its EPS supplier provided market and cost-efficiency data.

For high-power EPSs, DOE identified 10 manufacturers of EPSs for ham radios. Of these, LHV Power and Diamond Antenna agreed to be interviewed; the other manufacturers of high-power EPSs are based in Asia, and their U.S.-based sales staff declined to participate in the interviews. The manufacturers that did participate provided discrete cost-efficiency points, but did not provide comprehensive data for the high-power EPS CSLs presented in section II.C.4.

The market for medical EPSs has various manufacturers and of these, four agreed to be interviewed, while other companies were contacted but were not responsive to requests for an interview. The interviews focused on the different technical and legal requirements for medical EPSs, in contrast to Class A EPSs. Although none of the manufacturers provided a complete cost-efficiency curve, some were able to cite the differences in technology options and costs for EPSs that did and did not meet EISA 2007 standards (section II.C.6.c). The other manufacturers discussed the technical requirements for medical EPSs, but did not provide cost information.

DOE is analyzing EPSs for BCs that are wall adapters without charge control that are used with certain battery charging applications, as explained in section I.B and discussed in the TSD. Navigant Consulting has not yet identified and interviewed manufacturers of EPSs for BCs, relying instead on teardowns of Class A EPSs.

DOE welcomes additional data from interested parties on any non-Class A EPSs.

b. Independent Testing and Research

DOE reviewed online distributor catalogs to independently assess the market for non-Class A EPSs. DOE used this information in choosing representative product classes, presented in section II.C.3.

To independently verify efficiency data, DOE obtained and measured the efficiency of 18 non-Class A EPSs (Table II.18). All EPSs were bought online through distributors' Web sites, except one multiple-voltage EPS that a manufacturer loaned to DOE contractors for testing. For comparison, DOE also examined 16 Class A EPSs with characteristics similar to the medical EPSs and EPSs for BCs under consideration. EPSs with a single output voltage were subjected to the DOE test procedure for EPSs. (10 CFR 430, subpart B, appendix Z) EPSs with multiple output voltages were subjected to the test procedure that DOE had previously proposed (but has not yet adopted) for multiple-voltage EPSs. (73 FR 48079–83)

TABLE II.18—NON-CLASS A EPSS TESTED FOR EFFICIENCY BY DOE, SORTED BY TYPE AND EFFICIENCY

Index	Type	Topology	Nameplate output power *W*	Nameplate output voltage *V*	Average active-mode efficiency (percent)	No-load power *W*	Efficiency-related materials cost	
							$	Source
218	Multiple Voltage	Switched-mode	40	16, 32	84	0.26	$2.77	DOE.
217	Multiple Voltage	Switched-mode	40	16, 32	86	0.27	2.99	DOE.
216	Multiple Voltage	Switched-mode	203	5, 12	81	5.16		
213	Multiple Voltage	Switched-mode	203	5, 12	82	12.33	6.45	iSuppli.
214	Multiple Voltage	Switched-mode	203	5, 12	85	0.40		
203	Multiple Voltage	Switched-mode	203	5, 12	86	3.29	9.08	iSuppli.
404	High Power	Linear regulated	345	13.8	51	12.60		
401	High Power	Linear regulated	345	13.8	62	15.43	115.32	iSuppli.
402	High Power	Switched-mode	345	13.8	81	6.01	33.64	iSuppli.
403	High Power	Switched-mode	345	13.8	84	6.65		
301	Medical	Switched-mode	18	12	78	0.33	2.23	iSuppli.
302	Medical	Switched-mode	20	12	80	0.29	2.27	iSuppli.
130	Class A	Linear regulated	14.4	12	64	0.56	1.49	DOE.
117	Class A	Switched-mode	18	12	78	0.65	2.00	iSuppli.
120	Class A	Switched-mode	18	12	78	0.56	2.22	iSuppli.
118	Class A	Switched-mode	18	12	81	0.27	1.96	iSuppli.
106	Class A	Switched-mode	2.5	5	63	0.13	1.13	iSuppli.
105	Class A	Switched-mode	2.5	5	67	0.13	0.75	iSuppli.
103	Class A	Switched-mode	1.75	5	74	0.12	0.77	iSuppli.
17	Class A	Line-frequency, linear regulated.	5	5	36	1.85	1.16	DOE.
27	Class A	Line-frequency, switched-mode regulated.	5	5	49	1.42	1.54	DOE.
22	Class A	Switched-mode	5	5	59	0.42	1.29	DOE.
25	Class A	Switched-mode	5	5	66	0.64	1.45	DOE.
37	Class A	Switched-mode	5	5	66	0.66	1.50	DOE.
18	Class A	Switched-mode	5	5	70	0.54	1.46	DOE.
21	Class A	Switched-mode	5.2	5.2	71	0.10	1.63	DOE.
24	Class A	Switched-mode	5	5	72	0.11	1.34	DOE.
8	Class A	Switched-mode	5	5	73	0.11	1.06	DOE.

c. Teardown Cost Estimates

DOE contracted iSuppli Corp. to tear down and estimate the materials cost for select units. For this analysis, DOE only considered the materials cost of components related to efficiency: the ERMC. Direct labor and overhead as well as non-production costs are accounted for in the markup from ERMC to efficiency-related manufacturer's selling price (MSP), as in Figure II.3. These cost estimates also account for the typical number of units produced by the manufacturer as well as the manufacturer's location (and associated labor rates). Table II.18 shows the results of the cost estimates.

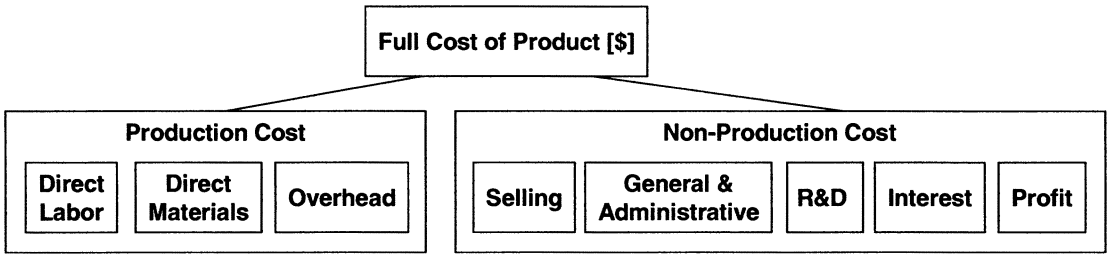


Figure II.3 Full Cost of Product: Breakdown of Production and Non-Production Costs

iSuppli provided DOE with a complete list of components, referred to as the ''bill of materials,'' for each product. DOE grouped components into three categories based on their impact on cost and efficiency: directly related, secondarily related, or not related to efficiency (Table II.19). For example, components such as transistors and capacitors are considered to have a direct effect on efficiency. DOE grouped enclosures and printed circuit boards (PCBs) as secondary since they tend to vary with efficiency, but do not directly affect it. Components such as labels and screws that have no relation to efficiency were considered not related. DOE used costs for components with a direct relation to efficiency to generate cost estimates (listed in Table II.18). Secondary components are not included in the efficiency-related cost estimate because DOE does not believe that they should be included in the cost of materials affecting efficiency. In developing the cost-efficiency curves in section II.C.3, DOE only considered the efficiency-related costs.

DOE seeks input on which of the components listed in Table II.19 should be included in the efficiency-related cost estimates, in particular the secondary components.

TABLE II.19—COMPONENT CATEGORIZATION FOR BILL OF MATERIALS ANALYSIS

Component family	Component type	Efficiency grouping	Efficiency impact
Batteries	Disposable	Battery pack	Not related.
Batteries	Other	Battery pack	Not related.
Batteries	Rechargeable	Battery pack	Secondary.
Discrete Semiconductor	Other	Electronics	Direct.
Discrete Semiconductor	Rectifier	Electronics	Direct.
Discrete Semiconductor	Thyristor	Electronics	Direct.
Discrete Semiconductor	Diode	Electronics	Direct.
Discrete Semiconductor	Diode—Schottky	Electronics	Direct.
Discrete Semiconductor	Transistor	Electronics	Direct.
Display	Color LCD	Other	Not related.
Display	Monochrome LCD	Other	Not related.
Display	Color OLED	Other	Not related.
Display	Monochrome OLED	Other	Not related.
Display	Other	Other	Not related.
Electro-Mechanical	Antenna	Other	Not related.
Electro-Mechanical	Connector	Other	Not related.
Electro-Mechanical	Connector (output cord only)	Output cord—Secondary	Secondary.
Electro-Mechanical	Other	Other	Not related.
Electro-Mechanical	PCB	PCB—Secondary.	Secondary.
Electro-Mechanical	Relay	Other	Not related.
Electro-Mechanical	Switch	Other	Not related.
Mechanical	Plastics & Elastomers—consumer product parts.	Other	Not related.
Mechanical	Plastics & Elastomers—wall adapter case only.	Case—Secondary	Secondary.
Mechanical	Metal	Other	Not related.
Mechanical	Metal—case only	Case—Secondary	Secondary.
Mechanical	Metal—heatsinks only	Heatsinks	Direct.
Mechanical	Other	Other	Not related.
Integrated Circuit	Analog	Electronics—IC	Direct.
Integrated Circuit	Logic	Electronics—IC	Direct.
Integrated Circuit	Memory	Electronics—IC	Direct.
Integrated Circuit	Multi-Chip IC	Electronics—IC	Direct.
Integrated Circuit	Other	Electronics—IC	Direct.
Optical Semiconductor	LEDs	Electronics	Direct.
Passive	Capacitor	Electronics	Direct.

TABLE II.19—COMPONENT CATEGORIZATION FOR BILL OF MATERIALS ANALYSIS—Continued

Component family	Component type	Efficiency grouping	Efficiency impact
Passive	Coupler/Balun	Electronics	Direct.
Passive	Crystal	Electronics	Direct.
Passive	Filter	Electronics	Direct.
Passive	Isolators/Circulator	Electronics	Direct.
Passive	Magnetic	Electronics	Direct.
Passive	Magnetic (transformer only)	Electronics—Transformer	Direct.
Passive	Oscillator	Electronics	Direct.
Passive	Piezoelectric Component	Electronics	Direct.
Passive	Resistor	Electronics	Direct.
Passive	Resonator	Electronics	Direct.
Passive	Sensor	Electronics	Direct.
Passive	Tuner	Electronics	Direct.
Passive	Other	Electronics	Direct.
Miscellaneous	Box Packaging, Printed Matter	Other	Not related.
Miscellaneous	Other	Other	Not related.

In addition to the units that iSuppli tore down, DOE purchased and created estimated ERMCs for two 40-watt multiple-voltage EPSs, one 14.4-watt Class A EPSs, and nine approximately 5-watt Class A EPSs (Table II.18). Rather than have iSuppli tear down these units, DOE chose to perform its own teardowns due to budget and time constraints. To create the ERMCs, DOE subject matter experts cataloged the efficiency-related components to create a bill of materials. DOE used the bill of materials and resources on component prices such as parts catalogs and iSuppli component prices to develop the ERMCs (section II.C.5.a and chapter 4 of the TSD. Lastly, DOE scaled the ERMCs from the test unit values to representative unit values using techniques presented in section II.C.5.d

3. Representative Product Classes and Representative Units

Based on the product classes for each type of non-Class A EPS, DOE selected representative product classes and representative units. DOE focused on representative product classes in its analysis. Results from representative product classes can be scaled to other product classes not analyzed. Representative units are theoretical versions of EPSs where all of an EPS's characteristics are defined, except efficiency and cost. By varying the efficiency of the representative units, DOE can evaluate the resultant costs to determine the cost-efficiency relationship.

Table II.20 lists the application, nameplate output power, nameplate output voltage(s), and production volume that specify non-Class A representative units. Output power affects both efficiency and cost. At higher powers, fixed losses in the EPS are proportionally smaller, making it cheaper for manufacturers to build EPSs with higher efficiencies. However, larger components that are necessary at higher powers result in higher costs. Output voltage affects efficiency but not cost, because EPSs with higher output voltage have consequently lower output current and associated losses. Production volume is the number of units a manufacturer annually produces for an EPS design. Higher production volumes allow manufacturers to leverage greater economies of scale, resulting in lower per-component and overall costs for the EPS. See chapter 4 of the TSD for a detailed discussion of each representative unit and its characteristics.

TABLE II.20—LIST OF NON-CLASS A REPRESENTATIVE UNITS

Type of non-Class A EPS	Application	Output power *W*	Output voltage *V*	Second output voltage *V*	Production volume *units/year*
Multiple Voltage	Multi-Function Device	40	16	32	1,000,000
Multiple Voltage	Video Game	203	5	12	4,000,000
High Power	Ham Radio	345	13.8		1,000
Medical	Nebulizer *	18	12		10,000
EPSs for BCs	Vacuum	1.8	6		1,000,000
EPSs for BCs	DIY Power Tool	4.8	24		1,000,000

* "A nebulizer is a device used to administer medication to people in the form of a mist inhaled into the lungs. It is commonly used in treating cystic fibrosis, asthma, and other respiratory diseases." Wikipedia. "Nebulizer." 2008. (Last accessed December 17, 2008.) *http://en.wikipedia.org/wiki/Nebulizer*

4. Selection of Candidate Standard Levels

Selection of CSLs followed the identification of representative product classes and representative units. Although the ERMC of a unit appears in the aggregate as a continuous function of efficiency, for analysis purposes, DOE focused on discrete CSLs. Note that the term "CSL" implies an eventual standard, although standard setting is beyond the scope of this determination analysis. DOE uses the term "candidate standard level" because it is a term of art for these discrete levels and because the CSLs may eventually lead to a specific standard level. DOE developed CSLs based on the data sources discussed in section II.C.2.

For each of the six representative units, DOE created four CSLs, although it may create more levels in future analysis or in response to comments from interested parties. These CSLs are intended to reflect the efficiencies in the market, although they do not necessarily include the highest efficiencies. The CSLs in this analysis are sufficient to demonstrate whether DOE should

conduct a standards rulemaking because they allow DOE to show the possibility of savings at a CSL above the baseline, which is the key criterion of the determination analysis. In future analysis, DOE may include a max-tech CSL to reflect the highest achievable efficiency.

Specifically in this analysis, CSLs are based on (1) EPSs that have been tested and torn down, (2) data points provided in manufacturer interviews, and (3) the International Efficiency Marking Protocol for External Power Supplies. (Energy Star. ''International Efficiency Marking Protocol for External Power Supplies.'' 2008. (Last accessed November 18, 2008.) *http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/International_Efficiency_Marking_Protocol.pdf*) In choosing the basis for CSLs, DOE gave the highest priority to units that were torn down and tested because DOE had complete data for efficiency and cost. If test and teardown data were not available, then DOE used data points from manufacturers. If no data were directly available, DOE referred to the International Marking Protocol. DOE presents a detailed discussion of the CSLs in chapter 3 of the TSD.

5. Methodology and Data Implementation

As mentioned previously, DOE purchased, tested, and tore down EPS units to obtain data to identify the cost-efficiency relationship for non-Class A EPSs. DOE subject matter experts measured the efficiency of all units using the appropriate DOE test procedure and a Yokogawa WT210 power meter. DOE contracted iSuppli Corporation to determine the ERMC for most of the tested units. Due to budgetary and time constraints, DOE developed a methodology to estimate the ERMC for other tested units, as discussed in section II.C.5.a.

In some cases, after DOE obtained cost and efficiency data for the test units, the data did not always directly apply because of differences between the test unit and the representative unit. DOE attempted to purchase units for testing and teardown that have all the characteristics of the representative units. Nonetheless, this was not always possible due to limited product availability in the market and changes to the representative units' characteristics. As a result, the costs and efficiencies of certain test units are not directly applicable to the representative units. DOE developed a methodology to scale cost and efficiency data for test units to estimate what those values would be if the test units had the characteristics of the representative units.

Nameplate output power, nameplate output voltage, and production volume all influence the cost and efficiency of an EPS in various degrees. For example, manufacturers often offer EPSs that share a common design and have the same nameplate output power, but differ in voltage. These differences in voltage will result in differences in achievable efficiency, but will not affect cost. Table II.21 outlines the impacts of changes to the three characteristics on cost and efficiency and the models that were developed to account for them.

TABLE II.21—IMPACT OF EPS CHARACTERISTICS ON COST AND EFFICIENCY

	Cost	Efficiency
Output Voltage	No impact	Efficiency increases with voltage; see model in section II.C.5.c.
Output Power	Cost increases with power but decreases with volume; see combined model in section II.C.5.d.	Efficiency increases with power; see model in section II.C.5.b.
Production Volume	Cost increases with power but decreases with volume; see combined model in section II.C.5.d.	No impact.

a. DOE Method for Estimating Efficiency-Related Materials Cost

DOE contracted with iSuppli to tear down and obtain high-volume production-cost estimates for 12 EPSs when developing non-Class A cost-efficiency curves. To obtain further cost-efficiency points, DOE tore down additional EPSs and estimated their high-volume materials costs. DOE used results from its cost estimates to develop portions of the cost-efficiency curves for the 18-watt medical EPS, the 40-watt multiple-voltage EPS, and the 1.8-watt and 4.8-watt EPSs for BCs representative units.

To estimate the cost of an EPS, DOE first created a bill of materials for the EPS's efficiency-related components and estimated the prices of the components at volumes consistent with the iSuppli teardown prices. DOE used two sources of information to develop its cost estimates: (1) High-volume component prices from iSuppli bills of materials, and (2) low-volume component prices from distributor catalogs. iSuppli provided DOE with a spreadsheet containing high-volume cost estimates for almost 1,000 individual components. To supplement that data, DOE also reviewed online catalog prices for components at volumes of 500 units. Depending on the information available, DOE used one of four methods to determine the price for each component (Table II.22). These methods allowed DOE to estimate with reasonable accuracy the high-volume materials costs for a larger number of units than would have been possible using the iSuppli teardowns alone. See chapter 5 of the TSD for more detailed information on these methods.

TABLE II.22—ILLUSTRATION OF LOW-VOLUME TO HIGH-VOLUME COMPONENT COST SCALING METHODS USED IN THE NON-CLASS A ENGINEERING ANALYSIS

Component type	Method used	Cost estimate for specific component		Variation of iSuppli cost across component category	Category-average for iSuppli cost	Ratio of averages: iSuppli cost to catalog cost	Basis for cost estimate
		High-volume iSuppli	Low-volume catalog				
0603 Capacitor	1	Available	Available				Direct iSuppli cost.
Optocoupler	2	Not Available	Available	Acceptable	Calculated		Average iSuppli cost.

TABLE II.22—ILLUSTRATION OF LOW-VOLUME TO HIGH-VOLUME COMPONENT COST SCALING METHODS USED IN THE NON-CLASS A ENGINEERING ANALYSIS—Continued

Component type	Method used	Cost estimate for specific component		Variation of iSuppli cost across component category	Category-average for iSuppli cost	Ratio of averages: iSuppli cost to catalog cost	Basis for cost estimate
		High-volume iSuppli	Low-volume catalog				
Field-Effect Transistor.	3	Not Available ..	Available	Excessive		Calculated	Scaled low-volume cost.
Unidentified Integrated Circuit.	4	Not Available ..	Not Available ..	Excessive	Calculated		Average iSuppli cost.

In this example, DOE had a component cost for the 0603 capacitor directly from the iSuppli database. The 0603 capacitor is a surface-mount capacitor often found on printed circuit boards. DOE used Method 1 (direct substitution) to estimate the component's cost. This method is the simplest and most accurate because it relies on a one-to-one match between components in the two bills of materials.

DOE did not have iSuppli component costs for direct substitution for the optocoupler in Table II.22, but did have iSuppli cost data for similar components. To account for this situation, DOE used Method 2, which estimated the cost of the optocoupler as the average iSuppli costs of similar components. In this method, DOE grouped the components from the high-volume iSuppli bills of materials into categories by component family, type, subtype, and any other relevant categories, and calculated an average materials cost for each category. To ensure that the averages were valid, DOE only used this approach if there were more than five cost estimates and a standard deviation less than $0.02. In this case, DOE substituted the category-average high-volume cost for the optocoupler.

DOE also did not have direct iSuppli component costs for direct substitution for the field effect transistor (FET). Further, the average iSuppli component cost did not meet DOE's criteria for validity (sufficient number of data points and low variation). As a result, DOE did not estimate the true cost using the category-average cost because might not have been accurate. However, DOE was able to estimate the low-volume cost of the FET using catalogs. Although the high-volume cost estimate varied excessively, the ratios of high-volume to low-volume cost estimates did not. DOE averaged these ratios and then scaled the low-volume cost estimate for the FET. Using this method, DOE was able to obtain a more accurate high-volume cost estimate than would have been possible through direct substitution of category-average costs.

In the final example of an ''unidentified integrated circuit,'' DOE did not have direct cost information from iSuppli or component catalogs. In this case, DOE substituted the category-average costs directly from the high-volume iSuppli bill of materials. Although this method had the potential to decrease the accuracy of the EPS cost estimates, it was used only for a limited set of components and only for the 40-watt multiple-voltage EPS. Chapter 4 of the TSD contains detailed information on all of these costing methods.

b. Efficiency Scaling by Output Power

The practically achievable efficiency of an EPS depends on its nameplate output power, with lower-power EPSs tending to exhibit lower active-mode efficiencies than their higher-power counterparts. (Changes in output power do not affect the no-load power consumption.) However, some of the EPSs that DOE analyzed for the non-Class A engineering analysis differ in output power from the representative units for their product class. This led DOE to develop a model for estimating the change in active mode efficiency when the output power of an EPS shifts to that of the representative unit.

DOE used market information to develop its model. By examining the distribution of Class A EPS efficiencies in the market, DOE was able to observe that achievable efficiency increases with power and that there is a wider range of efficiency at lower output powers. Any shift of a manufacturer's unit to the representative unit output power should take into account both effects, preserving a unit's relative standing in terms of efficiency among other units in the market.

A unit's relative standing could be calculated by comparing its efficiency to the level specified in the ENERGY STAR EPS Guidelines Version 1.1 (2005), as well as the best-in-market level, defined as the curve-fit of the highest-efficiency units in the ENERGY STAR qualifying products database for Class A EPSs. Because of the fundamental similarities in the design of Class A and non-Class A EPSs, DOE extended these same relationships and datasets to model the impacts on non-Class A EPS efficiency.

The model DOE used in the non-Class A engineering analysis reflects the above market dynamics by keeping constant the ratios among a unit's efficiency, the ENERGY STAR level, and the best-in-market level as the unit's output power is shifted to the level of the representative unit. Because the ratios are kept constant while the ENERGY STAR and best-in-market levels change with output power, the unit efficiency must also change. This updated unit efficiency is further adjusted to account for any differences in output voltage between the EPS and the representative unit, as explained in the following sections. (See chapter 5 of the TSD for further details on the mechanics of the model.)

c. Efficiency Scaling by Output Voltage

Together with the nameplate output power, the nameplate output voltage constrains a power supply's achievable efficiency. Given two EPSs with an identical design but different output voltages, the lower-voltage unit will be less efficient, primarily due to two factors:

- *Resistive losses:* Outputting the same power at a lower voltage requires higher output current, increasing the resistive losses, which are proportional to the square of the current.
- *Rectifier losses:* The voltage drop across the output rectifier increases with higher current, so that at a lower voltage more power (the amount of current multiplied by the voltage drop across the rectifier) will be dissipated, decreasing the efficiency of the power supply.

In addition to these losses, the EPS also experiences fixed losses that do not depend on the output voltage. These losses are associated with, for example,

the quiescent current of the controller IC for switched-mode designs or the core magnetization losses for line-frequency designs and are equal to the no-load power consumption of the power supply. Figure II.4 summarizes the loss mechanisms described above.

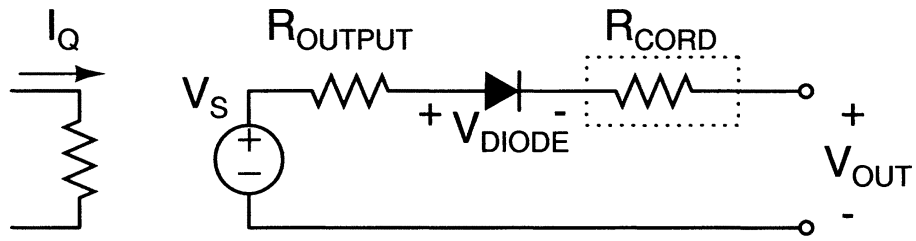


Figure II.4 Schematic of EPS Loss Model Used for Scaling Efficiency with Voltage

When scaling the efficiency of a power supply with voltage, DOE first calculated the typical losses according to the model presented in Figure II.4. Because the characteristics of each component in the loss model were fixed, the losses calculated using the model depended only on the output current and voltage, not the design specifics of the EPS. In short, the model returned the same losses for any two EPSs with the same output characteristics, regardless of their designs.

However, because each EPS has its own specific design, the actual losses of the power supply differ from those calculated according to this generic model. This difference between the modeled and actual losses does not depend on the output power or voltage, but is correlated with the active mode efficiency and no-load power of the EPS. Thus, the actual losses of an EPS can be said to be the sum of two components: (1) Generic losses, dependent on output power and voltage and modeled as described above; and (2) additional losses, dependent on the design of the EPS. Because the additional losses reflect the EPS design and the purpose of scaling was to estimate the losses of a particular design at the representative-unit output power and voltage, the additional losses were held constant between the original EPS and the representative unit to which it was being scaled.

Having obtained the generic losses for the original EPS using the model and its technology-dependent additional losses, DOE calculated the generic losses for the representative unit. DOE added the generic losses to the technology-dependent additional losses, resulting in an estimate of the total losses of the EPS design at the output power and voltage of the representative unit. The efficiency of the representative unit was finally calculated as the ratio of output power to the sum of the output power and the estimated losses.

d. Efficiency-Related Materials Cost Scaling by Nameplate Output Power and Sales Volume

To compare costs and efficiencies in order to develop cost-efficiency curves, DOE had to account for variations in nameplate output power and sales volume across the EPSs it analyzed. To do this, DOE developed a scaling model to determine what the ERMC of a tested EPS would be if it were produced in the same sales volume and had the same nameplate output power as the representative unit in its product class. DOE began the model development by assessing two datasets. The first dataset consisted of confidential production cost data for EPSs with nameplate output powers from 5 to 65 watts at a sales volume of 5,000 units, provided to Navigant Consulting. From this information, DOE observed a linear statistical relationship between EPS output power and EPS production cost in the dataset. The second dataset was public manufacturer data submitted to the California Energy Commission (CEC) in support of CEC's 2006 appliance standards rulemaking (available at *http://www.energy.ca.gov/appliances/archive/2006rulemaking2/documents/comments/NRDC.PDF*; last accessed March 2, 2009). This dataset contained EPS production cost vs. sales volume for 2-watt and 5-watt EPSs. The relationship between production cost and sales volume appeared to be nonlinear.

Based on observed relationships in the datasets, DOE determined that the ERMC of an EPS is roughly a linear function of output power and a nonlinear function of sales volume. DOE used these observations to develop a statistical model that relates output powers, ERMCs, and sales volumes of tested EPSs with the output power and sales volume of a representative unit in a product class. The model estimates the scaled ERMC of the tested unit using the test unit ERMC, sales volume, and output power, as well as the representative unit sales volume and output power as inputs. See chapter 4 of the TSD for further information.

6. Relationships Between Cost and Efficiency

Based on the data sources discussed in section II.C.2, DOE developed cost-efficiency curves for each representative unit by estimating the cost to reach each CSL. The primary data source for these curves comes from DOE measuring the efficiencies of 20 units and iSuppli tearing down and estimating costs for 13 of those units (Table II.18).

a. The Cost-Efficiency Relationships for Multiple-Voltage EPSs

DOE developed cost-efficiency data for the 40-watt multiple-voltage representative unit primarily based on manufacturer data. To verify and scale manufacturer interview data, DOE also tore down two multiple-voltage EPSs for multiple-function devices. These EPSs were at the same output power (40 watts) and sales volume (1,000,000 units per year) as the representative unit. Their output voltages (16 volts and 32 volts) were also the same as the output voltages of the representative unit, which made scaling unnecessary. Table II.23 shows the characteristics of the torn-down EPSs.

TABLE II.23—CHARACTERISTICS OF TORN-DOWN MULTIPLE-VOLTAGE EPSS FOR MULTIPLE-FUNCTION DEVICES

ID	Topology	Maximum output power	Output voltages	Average active-mode efficiency	Maximum no-load power consumption	ERMC	Sales volume *units/year*
		W	*V*	*%*	*W*	*2008$*	*units/year*
217	Switch Mode	40	16, 32	86	0.27	2.99	1,000,000
218	Switch Mode	40	16, 32	84	0.26	2.77	1,000,000

In interviews, manufacturers provided data for 12 cost-efficiency points. One manufacturer described specific changes that would be necessary to improve active-mode efficiency from 80 to 90 percent and no-load power consumption from 0.5 watts to 0.2 watts. These components included different transistors and IC controllers, Schottky output diodes, different common-mode chokes, and transformers with lower losses. Their usage increased the cost of the EPSs up to 38 percent over the 80-percent efficient EPS.

The manufacturers stated costs relative to a baseline value of 1.00X for the 80-percent efficient EPS up to 90 percent efficiency at relative costs of 1.38X. DOE used the ERMCs from the test and teardown results for the two EPSs in Table II.23 to determine the absolute cost of the manufacturer data. Specifically, DOE averaged the results for the EPSs to determine an average efficiency (85 percent) and ERMC ($2.88). In the manufacturer data, an 85-percent efficient EPS had a relative cost of 1.10X, which DOE set equal to $2.88. DOE was then able to calculate ERMCs for all 12 cost-efficiency points obtained in manufacturer interviews.

One manufacturer provided matched pairs of efficiency and no-load power consumption, which DOE used as the basis of the four CSLs. See section II.C.4 for further information. The corresponding ERMCs for these active-mode efficiencies are shown in Table II.24. These costs range from $2.66 at 81-percent efficiency to $3.67 at 91-percent efficiency. Figure II.5 shows the cost-efficiency curve for a multiple-voltage EPS for multiple-function devices along with the two torn-down EPSs.

TABLE II.24—COST-EFFICIENCY POINTS FOR A 40-WATT MULTIPLE-VOLTAGE EPS FOR A MULTIPLE-FUNCTION DEVICE

Level	Reference point for level	Minimum active-mode efficiency	Maximum no-load power consumption	Efficiency-related materials cost	Basis
		%	*W*	*2008$*	
0	Less Than EISA 2007	81	0.5	2.66	Manufacturer interview data.
1	Current Market	86	0.45	2.98	Manufacturer interview data.
2	High Level	90	0.31	3.54	Manufacturer interview data.
3	Higher Level	91	0.2	3.67	Manufacturer interview data.

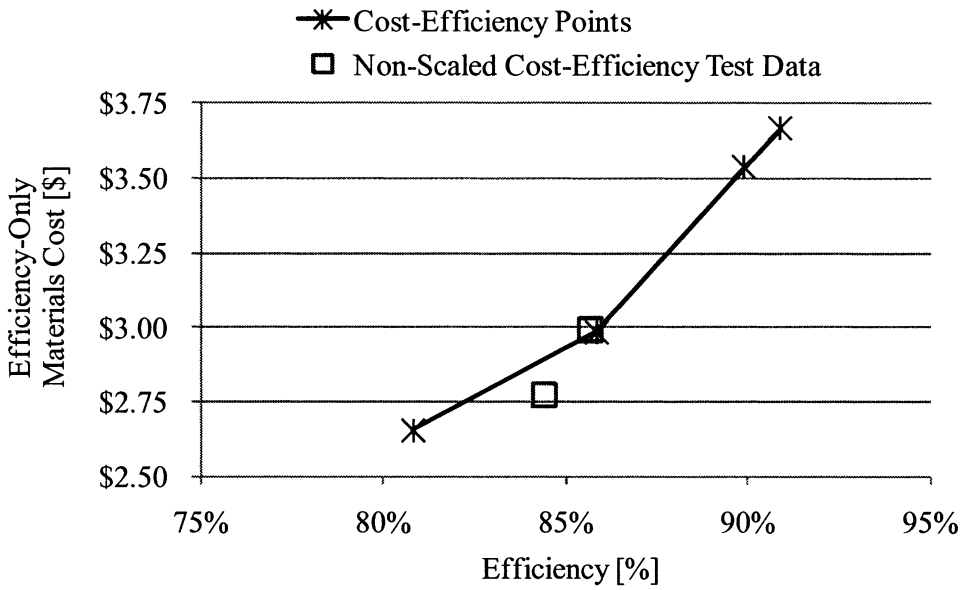


Figure II.5 Cost-Efficiency Curve for a Multiple-Voltage EPS for Multiple-Function Devices

In addition to the 40-watt multiple-voltage EPS, DOE also estimated costs for a 203-watt multiple-voltage EPS for a video game console. DOE based the cost-efficiency points on test data for four EPSs, teardown data for two EPSs, and two data points from manufacturer interviews. The torn-down EPSs had the same output voltages (5 volts and 12 volts) and output power (203 watts) as the representative unit. However, both EPSs had a different sales volume than the representative unit (4,000,000 units per year). Thus, DOE scaled the ERMC of these EPSs based on the scaling model in section II.C.5.d. The characteristics of the torn-down EPSs before and after scaling are shown in Table II.25 and Table II.26, respectively. Scaled characteristics are highlighted in gray.

Table II.25 Characteristics of Torn-Down Multiple-Voltage EPSs for Video Game Consoles Before Scaling

ID	Topology	Maximum Output Power W	Output Voltages V	Average Active-Mode Efficiency %	Maximum No-Load Power Consumption W	ERMC 2008$	Sales Volume units/year
203	Switch Mode	203	5, 12	86	3.29	9.08	2,500,000
213	Switch Mode	203	5, 12	82	12.33	6.45	1,000,000

Table II.26 Characteristics of Torn-Down Multiple-Voltage EPSs for Video Game Consoles After Scaling (Scaled Characteristics Highlighted in Gray)

ID	Topology	Maximum Output Power W	Output Voltages V	Average Active-Mode Efficiency %	Maximum No-Load Power Consumption W	ERMC 2008$	Sales Volume units/year
203	Switch Mode	203	5, 12	86	3.29	8.93	4,000,000
213	Switch Mode	203	5, 12	82	12.33	6.06	4,000,000

For CSL 0 and CSL 1, DOE used the efficiencies and scaled ERMCs of EPSs #213 and #203, respectively. DOE selected an active-mode efficiency of 86 percent for CSL 2 but required a lower no-load power consumption of 0.3 watts. The reduction in no-load power consumption can be achieved by reducing iron losses in the transformer, changing the switching frequency, and optimizing other elements of the circuitry at a cost increase of $0.13 over the CSL 1 EPS.

DOE chose an active-mode efficiency of 89 percent for CSL 3. This efficiency could be achieved using MOSFETs with reduced R_{DS_ON} and replacing a particular Schottky diode with a synchronous circuit at a cost of $3.11 over the CSL 2 EPS. See section II.C.4 for further information on how DOE chose the CSLs.

Table II.27 shows the cost-efficiency points for the 203-watt multiple-voltage EPS for a video game console based on the cost of making the improvements described previously. Figure II.6 shows the corresponding cost-efficiency curve along with the two torn-down units. There is a vertical portion of the cost-efficiency curve between CSL 1 and CSL 2. This corresponds to the decrease in no-load power consumption from 0.4 watts to 0.3 watts while the conversion efficiency remains constant at 86 percent between the two CSLs. The two dashed vertical lines mark the efficiencies of the torn-down EPSs.

TABLE II.27—COST-EFFICIENCY POINTS FOR A 203-WATT MULTIPLE-VOLTAGE EPS FOR A VIDEO GAME CONSOLE

Level	Reference point for level	Minimum active-mode efficiency	Maximum no-load power consumption	Efficiency-related materials cost	Basis
		%	W	2008$	
0	Generic Replacement	82	12.33	6.06	Test and teardown data.
1	Manufacturer Provided	86	0.4	8.93	Test and teardown data.
2	EU Qualified Level	86	0.3	9.05	Manufacturer interview data.
3	Higher Level	89	0.3	12.16	Manufacturer interview data.

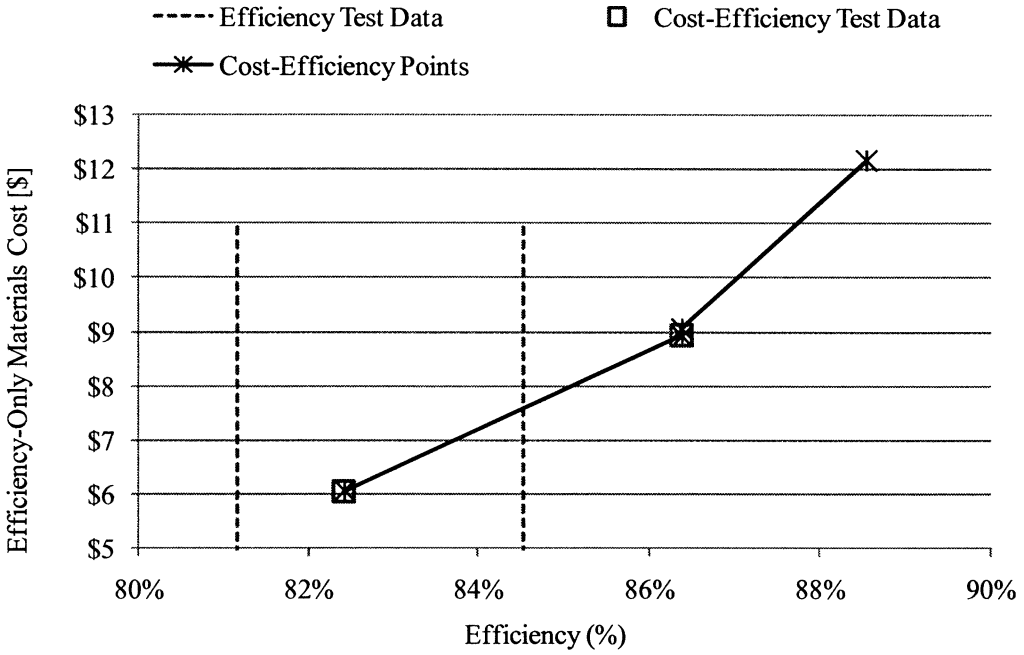


Figure II.6 Cost-Efficiency Curve for a 203-Watt Multiple-Voltage EPS for a Video Game Console

b. The Cost-Efficiency Relationship for High-Power EPSs

DOE developed cost-efficiency points for the 345-watt high-power EPS representative unit based on testing data for four units, teardown cost data for two units, and manufacturer interviews. Table II.28 shows the ERMCs for the torn-down units. Because they were at the same output power (345 watts) and the same sales volume (1,000 units per year) as the representative unit, DOE did not need to scale the ERMCs based on output power or sales volume. DOE also did not need to scale the efficiencies of the torn-down units because their output voltages and powers were the same as those of the representative unit.

TABLE II.28—CHARACTERISTICS OF TORN-DOWN HIGH-POWER EPSS

ID	Topology	Maximum output power	Output voltage	Average active-mode efficiency	Maximum no-load power consumption	ERMC	Sales volume
		W	*V*	*%*	*W*	*2008$*	*units/year*
401	Line Frequency	345	14	62	15.43	115.32	1,000
402	Switch Mode	345	14	81	6.01	33.64	1,000

DOE developed the ERMC for CSL 0 based on the ERMC of the torn-down line-frequency high-power EPS shown as EPS #401 in Table II.28. The data show that this line-frequency EPS is expensive mainly due to the materials costs for its transformer. The ERMC at CSL 1 was developed based on the torn-down switched-mode EPS shown as EPS #402. Because high-power line-frequency transformers need more material than high-power high-frequency transformers, the ERMC of the switched-mode EPS used to develop CSL 1 is significantly lower than the ERMC of the line-frequency EPS at CSL 0 ($115.32 vs. $33.64).

To develop the ERMC at CSL 2 for high-power EPSs, DOE used the ERMC of the torn-down EPS #402 and manufacturer interview data. One manufacturer representative stated that the efficiency and no-load power consumption of a high-power switched-mode EPS could be improved by 3 percent by changing the IC that controls the switching, with a cost increase of approximately $3.00. Thus, DOE created an ERMC of $36.64 for the EPS at CSL 2.

DOE developed the ERMC at CSL 3 for high-power EPSs by using the EPS modeled at CSL 2 along with manufacturer interview data and EPS test data. A manufacturer representative stated that additional increases in average active-mode efficiency beyond CSL 2 would cause a 10- to 20-percent increase in ERMC per efficiency point due to the usage of Schottky diodes for rectification. DOE observed that the average active-mode efficiency of 85 percent can be achieved by products already on the market by testing the efficiency of an available EPS. This EPS was a percentage point higher than the EPS used for CSL 2, and DOE created its ERMC accordingly.

The cost-efficiency points for the 345-watt high-power EPS ranged from $115.32 for a 62-percent efficient line-frequency EPS to $42.32 for an 85-percent efficient switched-mode EPS. In the case of high-power EPSs assessed by DOE, the more efficient switched-mode EPSs are substantially less expensive than the least efficient line-frequency

EPS at CSL 0. However, cost increases with efficiency among the switched-mode EPSs DOE assessed. The cost-efficiency data is shown in Table II.29 and Figure II.7. The vertical lines in the figure represent the efficiencies of the two torn-down EPSs.

TABLE II.29—COST-EFFICIENCY POINTS FOR A 345-WATT HIGH-POWER EPS FOR A HAM RADIO

Level	Reference point for level	Minimum active-mode efficiency	Maximum no-load power consumption	Efficiency-related materials cost	Basis
		%	W	2008%	
0	Line Frequency	62	15.43	115.32	Test and teardown data.
1	Switched-Mode—Low Level	81	6.01	33.64	Test and teardown data.
2	Switched-Mode—Mid Level	84	1.50	36.64	Manufacturer interview data.
3	Switched-Mode—High Level	85	0.50	42.32	Manufacturer interview data.

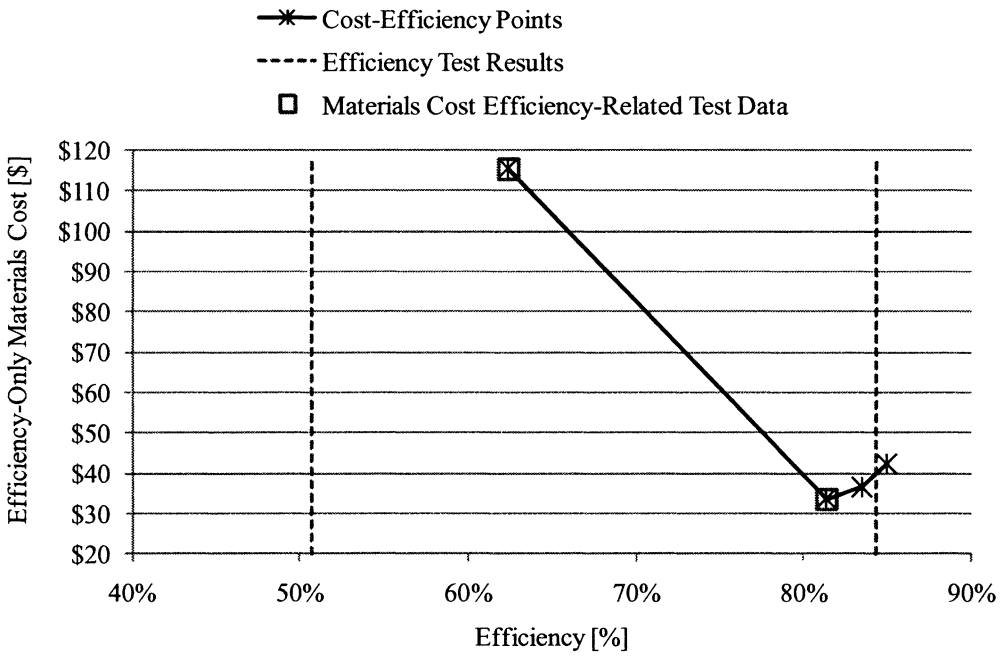


Figure II.7 Cost-Efficiency Curve for a 345-Watt High-Power EPS for a Ham Radio

c. The Cost-Efficiency Relationship for Medical Device EPSs

DOE developed the cost-efficiency points for the 18-watt medical device EPS representative unit based on test and teardown data for two medical EPSs and four Class A EPSs, along with five data points from manufacturer interviews. DOE included Class A EPSs in this analysis because the efficiency-related materials costs for medical device EPSs appear to be the same as Class A EPSs. This situation became evident during manufacturer interviews.

DOE tore down EPSs at a range of sales volumes and nameplate output powers, all close to 18 watts. The representative unit in the medical device EPS product class had a nameplate output power of 18 watts and a sales volume of 10,000 units per year, so DOE needed to scale the ERMCs of the torn-down units based on the model described in section II.C.5.d. DOE also needed to scale the active-mode efficiencies of the units based on the model described in section II.C.5.b. Table II.30 shows characteristics of the EPSs before scaling, and Table II.31 shows the same EPSs with the scaled characteristics highlighted in gray. EPSs #301 and #302 are used in medical devices; the other EPSs are Class A EPSs.

Table II.30 Characteristics of Medical EPSs and Class A EPSs Before Scaling

ID	Topology	Maximum Output Power W	Output Voltage V	Average Active-Mode Efficiency %	Maximum No-Load Power Consumption W	ERMC 2008$	Sales Volume units/year
301	Switched Mode	18	12	78	0.33	2.23	220,000
302	Switched Mode	20	12	80	0.29	2.27	220,000
117	Switched Mode	18	12	78	0.65	2.00	225,000
118	Switch Mode	18	12	81	0.27	1.96	225,000
120	Switched Mode	18	12	78	0.56	2.22	225,000
130	Linear Regulated	14	12	64	0.56	1.49	225,000

Table II.31 Characteristics of Medical EPSs and Class A EPSs After Scaling (Scaled Characteristics Highlighted in Gray)

ID	Topology	Maximum Output Power W	Output Voltage V	Average Active-Mode Efficiency %	Maximum No-Load Power Consumption W	ERMC 2008$	Sales Volume units/year
301	Switch Mode	18	12	78	0.33	3.83	10,000
302	Switch Mode	18	12	79	0.29	3.63	10,000
117	Switch Mode	18	12	78	0.65	3.44	10,000
118	Switch Mode	18	12	81	0.27	3.37	10,000
120	Switch Mode	18	12	78	0.56	3.82	10,000
130	Linear Regulated	18	12	66	0.56	2.95	10,000

DOE used the scaled ERMC of the linear-regulated EPS #130 as the ERMC for CSL 0. This is the only linear-regulated EPS that DOE tore down for this product class. DOE observed the market of available EPSs and noted the wide range of efficiencies and lack of correlations with ERMC over the efficiency range. In light of this observation, DOE chose to average the scaled ERMCs of the switched-mode EPSs to create the ERMCs for units at CSL 1 and CSL 2. The average active-mode efficiencies of the units at CSL 1 and CSL 2 are 76 percent and 80 percent, respectively. These efficiencies correspond to the international efficiency protocol levels Mark IV and Mark V (see section II.C.4) DOE believes that ERMC does not increase between Mark II and Mark V, but selected the efficiency range between Mark IV and Mark V to best reflect available EPS market data.

To develop the ERMC for CSL 3, DOE interviewed a manufacturer that described the components needed to create an EPS with an efficiency of 85 percent and a no-load power consumption of 0.15 watts. These design options included a quasi-resonant PWM controller, a primary FET and secondary synchronous rectifier circuit with low voltage drops, a planar transformer, and wiring with a higher gauge. The manufacturer estimated that these components would increase the ERMC of the EPS at CSL 2 by approximately $2.36, although DOE currently has no testing or teardown data to verify this point.

Table II.32 lists the cost-efficiency points for the 18-watt medical device EPS, ranging from $2.95 for a 66-percent-efficient EPS to $5.70 for an 85-percent-efficient EPS. See section II.C.4 for further information on how the active-mode efficiency and no-load power requirements for medical device EPSs were developed. Figure II.8 shows the cost-efficiency curve for the 18-watt medical device EPS along with data points for the medical device and Class A EPSs that DOE tore down.

TABLE II.32—COST-EFFICIENCY POINTS FOR AN 18-WATT MEDICAL DEVICE EPS FOR A NEBULIZER

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost	Basis
		%	W	*2008$*	
0	Less Than the IV Mark	66.0	0.557	2.95	Scaled ERMC of EPS #130.

TABLE II.32—COST-EFFICIENCY POINTS FOR AN 18-WATT MEDICAL DEVICE EPS FOR A NEBULIZER—Continued

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost	Basis
		%	W	*2008$*	
1	Meets the IV Mark	76.0	0.5	3.62	Average ERMC of switched-mode EPSs.
2	Meets the V Mark	80.3	0.3	3.62	Average ERMC of switched-mode EPSs.
3	Higher Level	85.0	0.15	5.70	Manufacturer interview data.

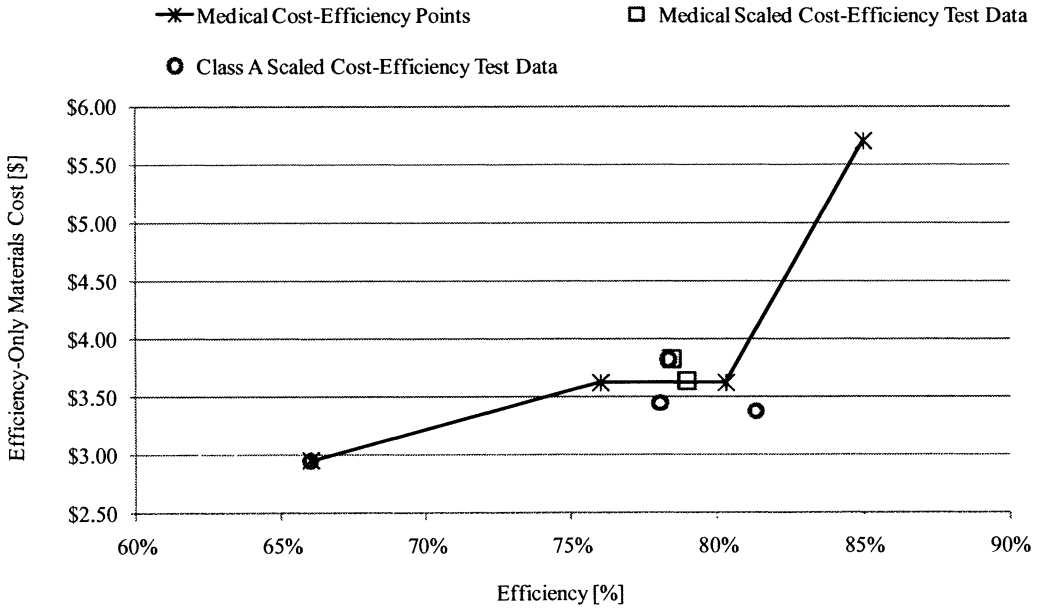


Figure II.8 Cost-Efficiency Curve for an 18-Watt Medical EPS for a Nebulizer

d. The Cost-Efficiency Relationships for EPSs for BCs

DOE developed the cost-efficiency points for the 1.8-watt and 4.8-watt EPS for BC representative units based on efficiency test data and cost estimates for 12 Class A EPSs. EPSs for BCs appear to be able to achieve the same range of efficiencies as Class A EPSs at the same costs. The majority of the torn-down EPSs were produced in nameplate output powers, output voltages, and sales volumes that differed from those of the representative unit (1.8 watts, 6 volts, and 1,000,000 units per year, respectively). Thus, DOE scaled the ERMCs and active-mode efficiencies of the torn-down EPSs using the models described in section II.C.3. The original and scaled characteristics of the torn-down EPSs and additional 5-watt EPSs are shown in Table II.33 and Table II.34, respectively, with the scaled characteristics highlighted in gray.

Table II.33 Characteristics of Torn-Down Class A EPSs Analyzed for a BC for a Vacuum, Before Scaling

ID	Topology	Maximum Output Power W	Output Voltage V	Average Active-Mode Efficiency %	Maximum No-Load Power Consumption W	ERMC 2008$	Sales Volume units/year
103	Switch Mode	1.75	5	74	0.12	0.77	1,000,000
105	Switch Mode	2.5	5	67	0.13	0.75	1,000,000
106	Switch Mode	2.5	5	63	0.13	1.13	1,000,000
17	Line-Frequency Linear Regulated	5	5	36	1.85	1.16	225,000
27	Line-Frequency Switching Regulated	5	5	49	1.42	1.54	225,000
22	Switch Mode	5	5	59	0.42	1.29	225,000
25	Switch Mode	5	5	66	0.64	1.45	225,000
37	Switch Mode	5	5	66	0.66	1.50	225,000
18	Switch Mode	5	5	70	0.54	1.46	225,000
21	Switch Mode	5.2	5.2	71	0.10	1.63	225,000
24	Switch Mode	5	5	72	0.11	1.34	225,000
8	Switch Mode	5	5	73	0.11	1.06	225,000

Table II.34 Characteristics of Torn-Down Class A EPSs Analyzed for a BC for a Vacuum, After Scaling (Scaled Characteristics Highlighted in Gray)

ID	Topology	Maximum Output Power W	Output Voltage V	Average Active-Mode Efficiency %	Maximum No-Load Power Consumption W	ERMC 2008$	Sales Volume units/year
103	Switch Mode	1.8	6	75	0.12	0.78	1,000,000
105	Switch Mode	1.8	6	65	0.13	0.71	1,000,000
106	Switch Mode	1.8	6	61	0.13	1.07	1,000,000
17	Line-Frequency Linear Regulated	1.8	6	24	1.85	0.83	1,000,000
27	Line-Frequency Switching Regulated	1.8	6	39	1.42	1.11	1,000,000
22	Switch Mode	1.8	6	50	0.42	0.93	1,000,000
25	Switch Mode	1.8	6	57	0.64	1.04	1,000,000
37	Switch Mode	1.8	6	58	0.66	1.08	1,000,000
18	Switch Mode	1.8	6	62	0.54	1.05	1,000,000
21	Switch Mode	1.8	6	63	0.10	1.16	1,000,000
24	Switch Mode	1.8	6	64	0.11	0.96	1,000,000
8	Switch Mode	1.8	6	66	0.11	0.76	1,000,000

DOE used the scaled ERMC of the line-frequency EPS #17 as the ERMC for the CSL 0. For CSLs 1 through 3, DOE chose to use the average of the scaled ERMCs of all switched-mode units shown in Table II.34. This is because DOE observed no clear correlation between the average active-mode efficiencies of the switched-mode EPSs and their ERMCs. See section II.C.4 for more information on how the active-mode efficiency and no-load power

consumption requirements were chosen for these CSLs.

Table II.35 lists the cost-efficiency points for the 1.8-watt EPS for a BC for a vacuum, ranging from $0.83 for a 24-percent-efficient EPS to $0.95 for a 66-percent-efficient EPS.

Figure II.9 shows the cost-efficiency curve for the EPS along with data for the Class A EPSs that DOE analyzed.

TABLE II.35—COST-EFFICIENCY POINTS FOR A 1.8–WATT EPS FOR BC FOR A VACUUM

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost	Basis
		%	W	*2008$*	
0	Less than the II Mark	24	1.85	$0.83	Scaled ERMC of EPS #17.
1	Meets the II Mark	45	0.75	$0.95	Average of switched-mode test data.
2	Meets the IV Mark	55	0.50	$0.95	Average of switched-mode test data.
3	Meets the V Mark	66	0.30	$0.95	Average of switched-mode test data.

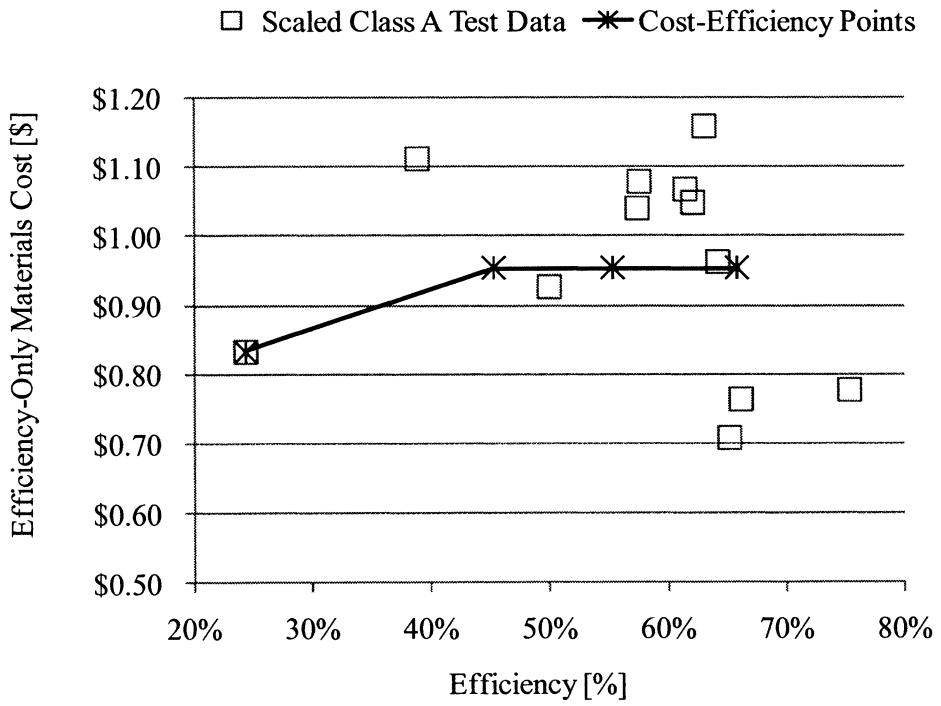


Figure II.9 Cost-Efficiency Curve for a 1.8-Watt EPS for BC for a Vacuum

For the 4.8-watt EPS used in a BC designed for use in a DIY power tool, DOE developed cost-efficiency points by using the same data it used for the 1.8-watt EPS for the BC analysis. The majority of the torn-down EPSs were produced in nameplate output powers, output voltages, and sales volumes different from those of the representative unit (4.8 watts, 24 volts, and 1 million units per year, respectively). Thus, DOE scaled the ERMCs and active-mode efficiencies of the torn-down EPSs using the models described in section II.C.3. Table II.33 shows the original characteristics of the torn-down EPSs. Table II.36 shows the scaled characteristics of the torn-down EPSs with the scaled characteristics highlighted in gray.

Table II.36 Characteristics of Torn-Down and Additional Five-Watt Class A EPSs Analyzed for a BC for a DIY Power Tool, After Scaling (Scaled Characteristics Highlighted in Gray)

ID	Topology	Maximum Output Power W	Output Voltage V	Average Active-Mode Efficiency %	Maximum No-Load Power Consumption W	ERMC 2008$	Sales Volume units/year
103	Switched Mode	4.8	24	90	0.12	0.97	1,000,000
105	Switched Mode	4.8	24	79	0.13	0.89	1,000,000
106	Switched Mode	4.8	24	76	0.13	1.33	1,000,000
17	Line-Frequency Linear Regulated	4.8	24	38	1.85	1.04	1,000,000
27	Line-Frequency Switching Regulated	4.8	24	52	1.42	1.39	1,000,000
22	Switched Mode	4.8	24	64	0.42	1.16	1,000,000
25	Switched Mode	4.8	24	71	0.64	1.30	1,000,000
37	Switched Mode	4.8	24	71	0.66	1.35	1,000,000
18	Switched Mode	4.8	24	76	0.54	1.31	1,000,000
21	Switched Mode	4.8	24	77	0.10	1.45	1,000,000
24	Switched Mode	4.8	24	78	0.11	1.21	1,000,000
8	Switched Mode	4.8	24	81	0.11	0.96	1,000,000

As it did for the 1.8-watt EPS, DOE used the scaled ERMC of the line-frequency EPS #17 as the ERMC at CSL 0. For CSLs 1 through 3, DOE chose to use the average of the scaled ERMCs of all switched-mode units shown in Table II.36 because no clear correlation could be observed between the efficiencies of the switched-mode units and their ERMCs. See section II.C.4 for information on how DOE chose the active-mode efficiency and no-load power consumption requirements for these CSLs.

Table II.37 lists the cost-efficiency points for the 4.8-watt EPS used in a DIY power tool BC, which range from $1.04 for a 38-percent-efficient EPS to $1.19 for a 72-percent-efficient EPS. Figure II.10 shows the cost-efficiency curve for the EPS along with data for the Class A EPSs that DOE analyzed.

TABLE II.37—COST-EFFICIENCY POINTS FOR A 4.8-WATT EPS FOR BC FOR A DIY POWER TOOL

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost	Basis
		%	W	*2008$*	
0	Less than the II Mark	38	1.85	1.04	Scaled EPS #17 ERMC.
1	Meets the II Mark	56	0.75	1.19	Average of switched-mode test data.
2	Meets the IV Mark	64	0.50	1.19	Average of switched-mode test data.
3	Meets the V Mark	72	0.30	1.19	Average of switched-mode test data.

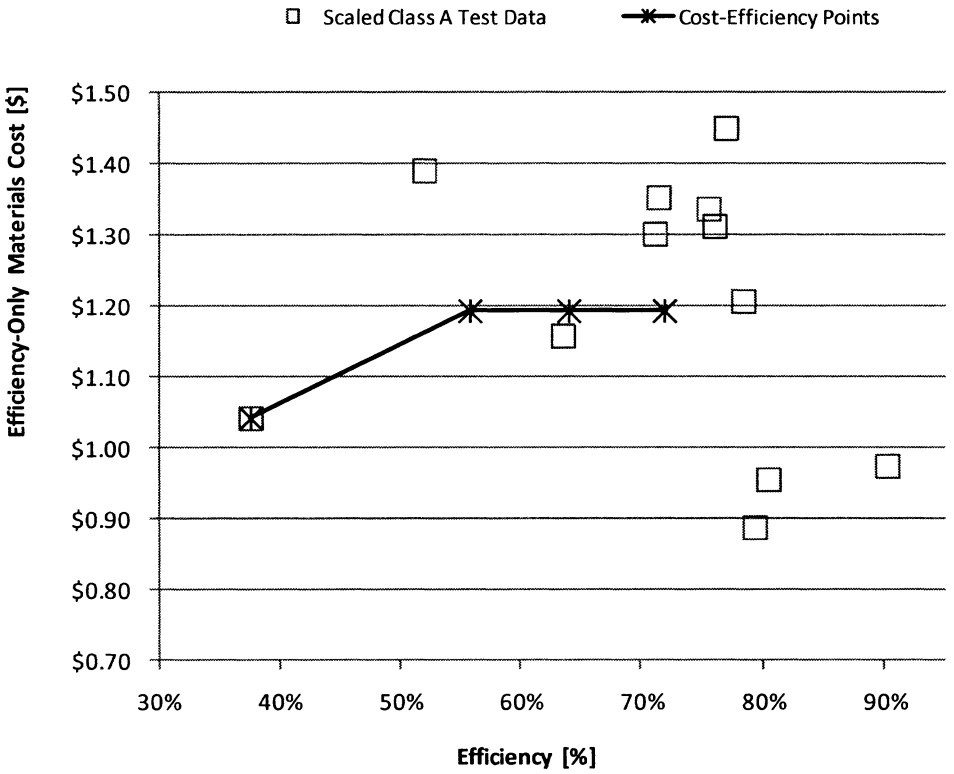


Figure II.10 Cost-Efficiency Curve for a 4.8-Watt EPS for BC for a DIY Power Tool

D. Energy Use and End-Use Load Characterization

1. Introduction

The purpose of the energy-use and end-use load characterization is to identify how consumers use products and equipment, and thereby determine the change in EPS energy consumption related to different energy efficiency improvements. For EPSs, DOE's analysis focused on the consumer products they power and on how end-users operate these consumer products.

The energy-use and end-use load characterization describes the unit energy consumption (UEC), which is an input to the LCC and national impact analyses. UEC represents the typical annual energy consumption of an EPS in the field. UEC for EPSs is calculated by combining (1) usage profiles, which describe the time a device spends in each mode in one year; (2) load, which measures the power provided by the EPS to the consumer product in each mode; and (3) efficiency, which measures the power an EPS must draw from mains to power a given load. Because of the nature of EPSs, the usage profile of the device will be related to the usage profile of the associated application. DOE assumes that usage profiles will not change over the analysis period.

For most electric appliances, energy consumption is the energy an application draws from mains while performing its intended function(s). EPSs, however, are power conversion devices, and their intended function is to deliver a portion of the energy drawn from mains to another application. As a result, EPS energy consumption is more appropriately characterized as that portion of the energy that the EPS draws from mains that is not delivered to the load. That is, the energy consumption of an EPS is the difference between the energy drawn by the EPS from mains (E_{IN}) and the energy supplied by the EPS to the attached load (E_{OUT}).

The following sections present the inputs, methodology, and outputs of the annual unit energy consumption calculations. Section II.D.2 explains how DOE calculated EPS energy consumption by examining separately each energy-consuming mode of the device. Section II.D.3 contains the usage profiles and load points DOE used for each type of EPS based on its applications. Section II.D.4 presents the annual energy consumption values DOE calculated for each representative unit at each CSL.

DOE seeks comments on the usage profiles and unit energy consumption calculations used in the determination analysis. DOE also seeks alternative sources, databases, or methodologies for developing its energy use estimates. See chapter 4 of the TSD for additional information on specific calculations.

2. Modes and Application States

When evaluating usage and energy consumption for a device, it is usually sufficient to observe only the energy-consuming modes of that device. Because the function of the EPS is to power consumer product applications, however, evaluating the usage and energy consumption of the EPS also requires evaluating the usage and energy consumption of the application itself.

To avoid confusion when describing usage and energy consumption from the perspective of the application, DOE uses the term ''application state.'' When describing usage and energy consumption from the perspective of the EPS, DOE uses the term ''EPS mode.''

By definition, all energy-consuming application states are part of active mode from the perspective of the EPS. That is, since any energy-consuming application state requires the application to be connected to the EPS, any energy-consuming application state

is part of EPS active mode. These states vary by the type of application. In the discussion of usage profile and load characterization, DOE will provide an explanation of the application states it considered when calculating usage and energy consumption.

An EPS can be in active mode, no-load mode, off mode, or unplugged. Table II.38 gives a summary of these modes.

TABLE II.38—SUMMARY OF EPS MODES

EPS mode	Status of EPS connection to mains	Status of EPS connection to application	EPS on/off switch selection (if switch is present)
Active	Connected	Connected	On.
No Load	Connected	Disconnected	On.
Off	Connected	Disconnected	Off.
Unplugged	Disconnected.		

Active Mode: EPCA defines active mode as the condition in which an energy-using product (I) is connected to a main power source; (II) has been activated; and (III) provides one or more main functions (42 U.S.C. 6295(gg)(1)(A)(i)). EPCA defines active mode for EPSs in particular as the mode of operation when an external power supply is connected to the main electricity supply and the output is connected to a load (42 U.S.C. 6291(36)(B)). Thus, in calculating usage profiles and energy consumption, DOE considers active mode to include any condition where the EPS is connected to both mains and the application.

Unless otherwise indicated, DOE assumed that while in active mode, an application places a load of 80 percent of nameplate output power on the EPS when it is operating, and a load of 20 percent when it is idle. DOE further assumed that an application places a load of 5 percent of nameplate output power on the EPS when the application is off. The following section further discusses each application.

No-Load Mode: EPCA defines no-load mode for EPSs as the mode of operation when an external power supply is connected to the main electricity supply and the output is not connected to a load (42 U.S.C. 6291(36)(D)). DOE determined that for EPSs, no-load mode is equivalent to standby, as explained in the ''Final Rule on Test Procedures for Battery Chargers and External Power Supplies (Standby Mode and Off Mode),'' published in the **Federal Register** on March 27, 2009. (74 FR 13318)

Off Mode: Off mode is a mode applicable only to an EPS with an on/off switch in which the EPS is connected to mains, is disconnected from the load, and the on/off switch is set to ''off.'' This definition was promulgated in the final rule. Of the EPSs examined for the determination analysis, only the two high power representative units included on/off switches. In both cases, turning off the switch fully severed the circuit, creating a situation electrically equivalent to the EPS being unplugged from mains. To estimate energy consumption, DOE treated the time when the EPS switch is set to off as equivalent to unplugged time. DOE seeks information on the prevalence and usage of on/off switches on all EPSs.

Unplugged Mode: Unplugged mode is when the EPS is disconnected from mains power. No energy is consumed in this state.

3. Usage Profiles

For many applications, usage depends strongly on the individual user. To account for the variety of users and their associated usage profiles, DOE developed multiple usage profiles where appropriate. DOE then calculated a weighted-average usage profile based on an estimated distribution of user types. For each user type, DOE provided a qualitative description of usage to explain the quantitative usage profile. The following subsections describe the application states, user types, and usage profiles for each representative unit.

a. Multiple-Voltage EPS (40-Watt Multifunction Device)

DOE identified the following application states for multifunction devices:

- Printing, photocopying, faxing (sending and receiving), and scanning: The multifunction device is on and performing one of its primary functions.
- Idle: The multifunction device is on but not performing any printing, photocopying, faxing, or scanning tasks.
- Off: The multifunction device is off, whether by automatic shutdown or by a user-controlled on/off switch.

For multifunction devices, DOE developed one usage profile, which describes usage in an in-home office setting (Table II.39). This profile was derived from a DOE report, ''U.S. Residential Information Technology Energy Consumption in 2005 and 2010,'' prepared by TIAX LLC in 2006. (TIAX LLC, ''U.S. Residential Information Technology Energy Consumption in 2005 and 2010.'' Prepared for U.S. Department of Energy, March 2006.) This usage profile is explained further in section 4.3.1 of the TSD. DOE also derived its estimates of EPS output power from this report, except for the printing, photocopying, faxing, and scanning application state, which DOE assumed to be 80 percent of nameplate output power. DOE invites comments on its usage profile and output power estimates for EPSs for multifunction devices.

TABLE II.39—USAGE AND OUTPUT POWER OF EPS FOR MULTIFUNCTION DEVICE

EPS mode	Application state	Annual usage hours/year	EPS output power W
Active	Printing, Photocopying, Faxing, Scanning	52	* 32
	Idle	1,606	9.1
	Off	7,102	6.2
No Load	Disconnected from EPS	0	0
Unplugged	Disconnected from EPS	0	0

* DOE estimated EPS output power for printing, photocopying, faxing, and scanning to be 80 percent of nameplate output power.

b. Multiple-Voltage EPS (203-Watt Xbox 360)

DOE identified the following application states for the Xbox 360:

- Video game playing: The console is on and the user is actively playing a video game.
- Video game idle: The console is on and a video game disc is inserted, but the user is not interacting with the game, *i.e.,* the game is paused, abandoned, or at the menu screen.
- DVD playing: The console is on, a DVD is inserted, and the console is actively playing a movie.
- DVD idle: The console is on, a DVD is inserted, and a movie is paused or at the menu screen.
- No disc: The console is on, but no disc is inserted.
- Off: The console is switched off.

DOE defined two usage profiles for the Xbox 360, one for a light user and one for a heavy user. The usage profiles were based on in-home usage audits of video game consoles conducted by The Nielsen Company in 2006. (The Nielsen Company, ''The State of the Console,'' Q4 2006.) DOE assumed 80 percent of users are light users and 20 percent are heavy users. DVD usage came from a TIAX report, ''Energy Consumption by Consumer Electronics in U.S. Residences.'' (TIAX, ''Energy Consumption by Consumer Electronics in U.S. Residences,'' Final Report to the Consumer Electronics Association, January 2007.) DOE estimated that DVD usage did not vary among user types, and that one-third of video game consoles would be used as a DVD player. DOE estimates of EPS output power for the various application states were derived from estimates of EPS input power in a 2008 report from the Natural Resources Defense Council. (NRDC, ''Lowering the Cost of Play: Improving the Energy Efficiency of Video Game Consoles,'' November 2008.) DOE invites comments on its usage profile and output power estimates for EPSs for the Xbox 360, summarized in Table II.40. Section 4.3.1 of the TSD contains additional detail.

TABLE II.40—USAGE AND OUTPUT POWER OF EPS FOR XBOX 360

EPS mode	Application state	Weighted-average annual usage hours/year	EPS output power* *W*
Active	Playing Video Game	820	102.62
	Idle Video Game	560	101.50
	Playing DVD	90	95.02
	Idle DVD	150	95.02
	Idle—No Disc	150	86.38
	Off	6,990	2.35
No Load	Disconnected from EPS	0	0
Unplugged.		0	0

*Output power levels for all application states were derived from input power measurements reported in NRDC's ''Lowering the Cost of Play: Improving the Energy Efficiency of Video Game Consoles,'' November 2008, using DOE's measurements of the efficiency and no-load power consumption of the EPS that ships with the Xbox 360.

c. High-Power EPS (345-Watt Amateur Radio Equipment)

DOE identified the following application states for amateur radio equipment.

- Transmitting: The radio equipment is turned on and actively transmitting.
- Receiving: The radio equipment is turned on and actively receiving.
- Idle: The radio equipment is turned on but neither transmitting nor receiving.

DOE defined three usage profiles for amateur radio equipment based on conversations with the Amateur Radio Relay League. The light usage profile is intended to approximate infrequent use of a radio system. Light users only use their equipment for limited periods on a weekly basis or for an extended period on a monthly basis. The medium usage profile is intended to approximate regular evening or weekend use. The heavy usage profile is intended to reflect the usage of a repeater system, which is a radio setup configured to relay transmissions automatically, or a similar continuous use system. Such systems are typically never switched off. The light, medium, and heavy usage profiles were assumed to represent 50 percent, 25 percent, and 25 percent of users, respectively. Section 4.3.2 of the TSD discusses these three usage profiles.

DOE assumed EPS power consumption to be 80 percent of nameplate in the transmitting application state and 20 percent of nameplate in the receiving and idle application states. DOE also assumed that while in use, a radio system will be transmitting, receiving, and idle for 10 percent, 10 percent, and 80 percent of the time, respectively. DOE seeks comments on its assumptions about the usage of high-power EPSs, summarized in Table II.41.

TABLE II.41—USAGE AND OUTPUT POWER OF EPS FOR AMATEUR RADIO EQUIPMENT

EPS mode	Application state	Weighted-average annual usage hours/year	EPS output power *W**
Active	Transmitting	140	276
	Receiving	140	69
	Idle	2,411	69
No Load	Disconnected from EPS	0	0
Off or Unplugged.		6,070	0

*DOE estimated output power levels at 80 percent of nameplate for transmitting and at 20 percent of nameplate for receiving or idle.

d. Medical EPS (18-Watt Nebulizers and 35-Watt Sleep Therapy Devices)

DOE identified the following application states for EPSs for sleep therapy devices and nebulizers:

- On: The on/off switch is set to on and the device is in use.
- Off: The on/off switch is set to off and the device is not in use.

DOE estimated usage for three types of nebulizer users—light, medium, and heavy—with an even distribution among user types. DOE based these user types around the number of sessions per day a user employs the nebulizer. From an energy consumption perspective, a session involves turning on the nebulizer, inhaling the aerosolized medication, and then turning the nebulizer off. Each session is assumed to take an average of 10 minutes. The number of sessions per day ranges from one in the light usage profile to three in the heavy usage profile, depending on the severity of the illness and the type of medication. DOE also assumed that because most users require daily administration of medication, nebulizer users are unlikely to unplug their nebulizers (and associated EPSs) from mains.

Some nebulizers with an EPS offer a rechargeable battery pack as an optional accessory. These EPSs lack charge control because they can power the product directly without the battery. The usage profiles do not represent usage under battery power. Such a profile would increase EPS energy consumption because of the losses inherent in charging and maintaining a battery. Hence, the nebulizer usage profiles used in the determination are conservative estimates of EPS energy consumption.

DOE estimated that 25 percent of light users would unplug the EPS and nebulizer from mains when not in use. DOE further assumed EPS power consumption to be 80 percent of nameplate in the on application state and 5 percent of nameplate in the off application state. The usage profiles DOE developed are contained in section 4.3.3 of the TSD and are summarized in Table II.42. DOE seeks comments on its assumptions about the usage of medical EPSs with nebulizers.

TABLE II.42—USAGE AND OUTPUT POWER OF EPS FOR NEBULIZER

EPS mode	Application state	Weighted-average annual usage *hours/year*	EPS output power *W**
Active	On	121.7	14.4
	Off	8,638.3	0.9
No Load	Disconnected from EPS	0	0
Unplugged		0	0

* DOE estimated output power levels at 80 percent of nameplate when the application is on and at 20 percent of nameplate when the application is off.

DOE developed one usage profile for sleep therapy devices that assumes the user turns on the device when going to sleep and turns it off after waking 8 hours later. DOE also assumed that because of the required daily use of the device, users would likely leave their sleep therapy devices (and associated EPSs) plugged into mains. DOE assumed EPS power consumption to be 80 percent of nameplate in the on application state and 10 percent of nameplate in the off application state. Table II.43 shows this usage profile; section 4.3.3 of the TSD provides additional detail. DOE seeks comments on its assumptions about the use of medical EPSs with sleep therapy devices.

TABLE II.43—USAGE AND OUTPUT POWER OF EPS FOR SLEEP THERAPY DEVICE

EPS mode	Application state	Annual usage *hours/year*	EPS output power *W*
Active	On	2,920	28
	Off	5,840	3.5
No Load	Disconnected from EPS	0	0
Unplugged		0	0

e. EPS for Battery Charger (1.8-Watt Cordless Handheld Vacuum)

DOE identified the following application states for battery chargers for cordless handheld vacuums:

- Active charging: The battery is connected to the battery charger and the battery is in the process of charging.
- Maintenance: The battery is fully charged and connected to the battery charger, and the battery charger remains connected to mains.

Some cordless handheld vacuums use cradles to charge the battery. The cradles that DOE evaluated in its teardown analysis were found to contain no circuitry. The cradle acted as an extension of the EPS output cord. Therefore, in representing usage, DOE treated the time when the vacuum was detached from the cradle or EPS, and the EPS was plugged into mains, as no-load mode.

DOE seeks comments on these issues and on the prevalence of detachable batteries used in household appliances such as cordless handheld vacuums. DOE also welcomes comments on differentiating between wall adapters and cradles and on the type of circuitry cradles typically contain.

DOE developed one usage profile for cordless handheld vacuums with input from the Association of Home Appliance Manufacturers and the Power Tool Institute. This profile was used to represent the usage of all the rechargeable floor care appliances considered in this determination analysis. DOE assumed EPS power consumption to be 80 percent of nameplate in the active charging application state and 35 percent of nameplate in the maintenance application state. Table II.44 shows this usage profile; see section 4.3.4 of the TSD for additional detail. DOE seeks

comments on its assumptions about the usage of EPSs with rechargeable floor care appliances.

TABLE II.44—USAGE AND OUTPUT POWER OF EPS FOR CORDLESS VACUUM

EPS mode	Application state	Annual usage *hours/year*	EPS output power *W*
Active	Active Charging	416	1.44
	Maintenance	8,292	0.63
No Load	Disconnected from EPS/Cradle	52	0
Unplugged		0	0

f. EPS for Battery Charger (4.8-Watt Power Tool)

DOE identified the following application states for battery chargers for power tools:

- Active charging: The battery is connected to the battery charger and the battery is in the process of charging. For power tools, DOE estimated a charge rate of C/3, *i.e.,* the battery would take 3 hours to charge.
- Maintenance: The battery is connected to the battery charger and the battery has been fully charged.
- No battery: The battery is not connected to the battery charger.

DOE developed two usage profiles for power tools: One for light usage and one for heavy usage. Each profile represents 50 percent of users. DOE developed the heavy usage profile with input from the Power Tool Institute. DOE developed the light usage profile based on a scaled-back user. DOE assumed EPS power consumption to be 80 percent of nameplate in the active charging application state, 35 percent of nameplate in the maintenance application state, and 1 watt in the no-battery state. See section 4.3.5 of the TSD for a discussion of these usage profiles, which are summarized in Table II.45. DOE seeks comments on its assumptions about the usage of EPSs with rechargeable DIY power tools.

TABLE II.45—USAGE AND OUTPUT POWER OF EPS FOR POWER TOOL

EPS mode	Application state	Weighted-average annual usage *hours/year*	EPS Output power *W*
Active	Active Charging	105	3.84
	Maintenance	2,093	1.68
	No-Battery	104	1
No Load	Disconnected from EPS	104	0
Unplugged		6,354	0

4. Unit Energy Consumption

EPS power consumption is a function of three factors: the nameplate output power of the EPS, the efficiency of the EPS, and the consumption of the EPS when it is in no-load mode. To calculate the energy consumption of an EPS, DOE combined the time and power consumption values shown in the usage profiles above according to a methodology explained in section 4.4 of the TSD. Table II.46 shows the unit energy consumption values DOE calculated for each type of EPS at each CSL.

TABLE II.46—EPS UNIT ENERGY CONSUMPTION (KWH/YEAR)

Candidate standard level	Type of EPS					
	Multiple-voltage EPS for MFDs	Multiple-voltage EPS for Xbox 360	High-power EPS	EPS for medical devices	EPS for vacuums	EPS for power tools
0	15.8	126.0	103.3	40.2	12.0	6.9
1	11.2	32.4	39.5	25.3	4.6	3.3
2	7.7	31.9	28.5	19.3	3.1	2.3
3	6.6	26.6	24.1	13.6	2.0	1.6

E. Life-Cycle Cost and Payback Period Analyses

This section describes the methodology that DOE used to analyze the economic impacts of possible energy efficiency standards on individual consumers. DOE performed this analysis on the same representative units evaluated in section II.C.3. The effects of standards on individual consumers include a change in operating expenses (usually decreased) and a change in purchase price (usually increased). DOE used two metrics to determine the effect of potential standards on individual consumers:

- *Life-cycle cost* is the total consumer expense over the lifetime of an appliance, including the up-front cost (the total price paid by a consumer before the appliance can be operated) and all operating costs (including energy expenditures). DOE discounts future operating costs to the time of purchase.
- *Payback period* represents the number of years it would take the customer to recover the assumed higher purchase price of more energy efficient equipment through decreased operating

expenses.[1] Sometimes more energy efficient equipment can have a lower purchase price than the less energy efficient equipment that it substitutes. In this case, the consumer realizes an immediate financial benefit and thus there is no payback period.

EPSs are unique appliances because they are always used in conjunction with other products of interest. Most EPSs are packaged with particular products, so consumers usually do not buy EPSs directly. For example, consumers obtain EPSs for video game systems when buying the video game systems themselves. Thus, although the LCC and PBP analyses use the consumer purchase prices of EPSs, in reality, those prices are a hidden portion of the prices that consumers pay for the product.

The energy consumption and technologies of the non-Class A EPSs DOE analyzed is assessed in further detail in section II.B. Chapter 5 of the TSD contains a description of how DOE used technology options, energy consumption, and other input data to determine life-cycle cost and payback period.

F. National Impact Analysis

In its determination analysis, DOE estimated the potential for national energy savings from energy conservation standards for non-Class A EPSs, as well as the net present value of such standards. Figure II.11 depicts these analyses, referred to collectively as the national impact analysis. A brief description of the national impact analysis follows.

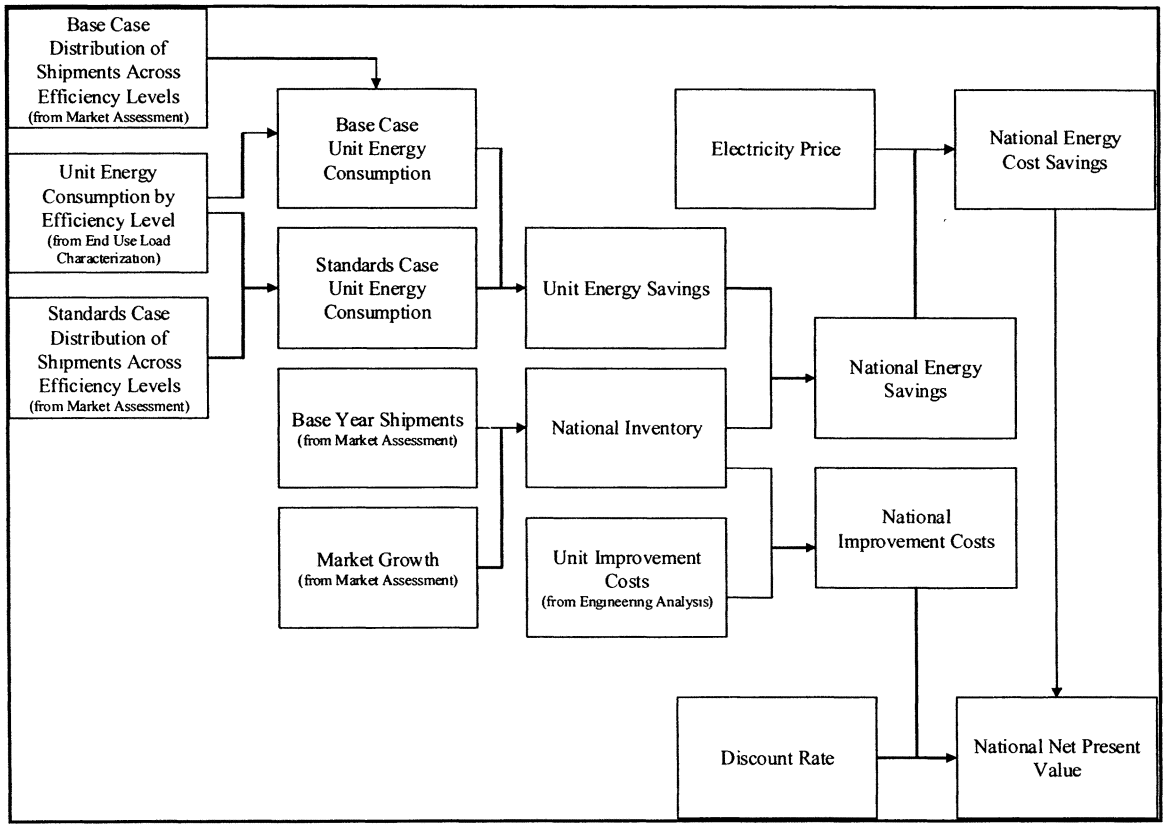


Figure II.11 Calculation of National Energy Savings and Net Present Value

Unit energy savings (UES) is the difference between the unit energy consumption (UEC) in the standard case and the UEC in the base case. Thus, the UES represents the reduced energy consumption of a single unit due to the higher efficiency generated by a standard. Once calculated, the UES is then multiplied by the national inventory of units to calculate national energy savings. For each type of EPS, DOE calculated the shipment-weighted average UEC of products in that class sold in a given year. DOE performed these calculations for each year in the evaluation period in both the standards case and the base case. DOE then calculated UES by taking the difference between the two cases. Using the calculated national inventory and UES for each year of the analysis, DOE calculated national energy savings by multiplying the two inputs together.

The national net present value of energy conservation standards is the difference between electricity cost savings and equipment cost increases. DOE calculated electricity cost savings for each year by multiplying energy savings by forecasted electricity prices. DOE assumed that all of the energy cost savings would accrue to consumers paying residential electricity rates. DOE calculated equipment cost increases for each year by taking the incremental price increase per unit between a base-case and a standards-case scenario and multiplying the difference by the national inventory. For each year, DOE took the difference between the savings and cost to calculate the net savings (if positive) or net cost (if negative). After calculating the net savings and costs, DOE discounted these annual values to the present time using discount rates of

[1] DOE computes a ''simple PBP,'' which uses only the first year of operating costs. Thus, operating costs are not discounted. See section II.E for further information.

3 percent and 7 percent and summed them to obtain the national net present value. See chapter 6 of the TSD for additional details.

III. Results

A. Life-Cycle Cost and Payback Period Analyses

The tables and figures below present key results of the LCC and PBP analyses for all six of the EPS representative units in the residential sector. All LCC and PBP results were generated using the *AEO2009* residential sector reference case electricity price trend, a start year of 2013, and a nominal EPS usage pattern. LCC and PBP inputs are discussed in section II.E. To assess the impact of a standard on consumers, it is helpful to compute the LCC savings that a consumer will experience when replacing an EPS at a particular CSL with an EPS at a different CSL. Eq. III.1 shows how DOE calculated LCC savings:

$$LLCSavings_{k \to L} = LLC_k - LCC_L \qquad \text{Eq. III.1}$$

where $LCCSavings_{k \to L}$ is the LCC savings that a consumer would experience when replacing an EPS at CSL k with an EPS at CSL L,

LCC_k is the life-cycle cost of an EPS at CSL k,

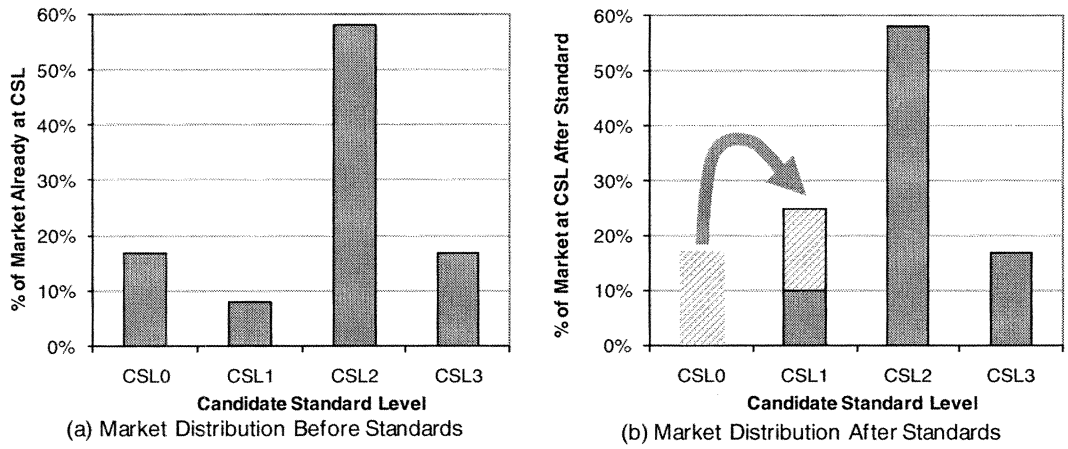
LCC_L is the life-cycle cost of an EPS at CSL L,

k is the CSL of the EPS being replaced, and

L is the CSL of the EPS being purchased.

DOE assumes that at any given time, EPSs of a variety of efficiencies can be found on the market for a particular product. (For example, there are EPSs of different efficiencies for radios and video game systems.) Different percentages of consumers in the country own these different EPSs. For example, DOE believes that 17 percent of the market may own an EPS at CSL 0 for a particular vacuum cleaner battery charger, while 8 percent of the market may own an EPS at CSL 1 for that same product. (Because DOE expects that there is a wide variety of efficiencies in the marketplace, it condensed the efficiencies into the four CSLs for purposes of analysis.) See Figure III.1 for an example, where (a) shows the market distribution of efficiencies for the EPS before standards, and (b) shows consumers with CSL 0 EPSs replacing those EPSs with units at CSL 1 due to the imposition of a standard at CSL 1.

Figure III.1 Example of a Standard at CSL 1 Affecting the Market Distribution of EPSs



Accordingly, DOE calculated a weighted-average LCC savings based on how much a potential standard would affect the market. In calculating the weighted average, DOE assumed that consumers below a standard level would move up to the standard level and not beyond it when purchasing new products, while consumers already at the standard level or above it would continue purchasing at the same levels. Thus, the weighted-average LCC savings represents the LCC savings of the average consumer affected by standards. Eq. III.2 shows how DOE calculated the weighted-average LCC savings:

$$WeightedLCCSavings_L = \frac{\sum_{k=0}^{L-1} \left(LLCSavings_{k \to L} \times MARKET_k \right)}{\sum_{k=0}^{L-1} MARKET_k} \qquad \text{Eq. III.2}$$

where $WeightedLCCSavings_L$ is the LCC savings that the average consumer affected by a standard set at CSL L would experience, $LCCSavings_{k \rightarrow L}$ is the LCC savings that a consumer would experience when replacing an EPS at CSL k with an EPS at CSL L, and $MARKET_k$ is the percentage of the market already owning EPSs at CSL k.

The same analogy can be drawn for the weighted-average payback period calculations; that is, DOE calculated a weighted-average payback period based on how much of the market would be affected by a potential standard. DOE also assumed that consumers below a standard level would move up to the standard level and not beyond it when purchasing new products, while consumers already at the standard level or above it would continue purchasing at the same levels. Thus, the weighted-average PBP represents the PBP of the average consumer affected by standards. Eq. III.3 shows the equation DOE used to calculate the weighted-average PBP.

$$WeightedPBP_L = \frac{\sum_{k=0}^{L-1} \left(PBP_{k \rightarrow L} \times MARKET_k \right)}{\sum_{k=0}^{L-1} MARKET_k} \qquad \text{Eq. III.3}$$

where $WeightedPBP_L$ is the PBP that the average consumer affected by a standard set at CSL L would experience, $PBP_{k \rightarrow L}$ is the PBP that a consumer would experience when replacing an EPS at CSL k with an EPS at CSL L, and $MARKET_k$ is the percentage of the market already owning EPSs at CSL k.

a. Multiple-Voltage EPS (40-Watt Multiple-Function Device)

DOE analyzed two multiple-voltage EPSs. The first was designed for a multiple-function device and had an output power of 40 watts. Table III.1 and Figure III.2 present the results for this EPS. Four sets of results are plotted in the figure:

- ''Weighted Average'' represents the average LCC savings weighted by the percentage of the market already at each CSL to indicate savings for an ''average'' affected consumer (Table III.1).
- ''Movement from CSL 0'' represents the LCC savings that consumers owning the baseline EPS would achieve by purchasing EPSs at CSLs 1, 2, and 3.
- ''Movement from CSL 1'' represents the LCC savings that consumers owning the CSL 1 EPS would achieve by purchasing EPSs at CSLs 2 and 3.
- ''Movement from CSL 2'' represents the LCC savings that consumers owning the CSL 2 EPS would achieve by purchasing the EPS at CSL 3.

TABLE III.1—LCC AND PAYBACK PERIOD RESULTS FOR MULTIPLE-VOLTAGE FORTY-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL	Conversion efficiency	No-load power	Percent of market already at CSL	Consumer purchase price	Operating cost	LCC	Weighted-average life-cycle cost savings	Weighted-average payback period
CSL	%	W	%	2008$	2008$/year	2008$	2008$	year
0	81	0.5	25	8.45	1.86	16.44	.....	.....
1	86	0.5	50	9.49	1.32	15.15	1.29	1.9
2	90	0.3	25	11.26	0.91	15.15	0.43	3.8
3	91	0.2	0	11.67	0.78	15.01	0.47	3.5

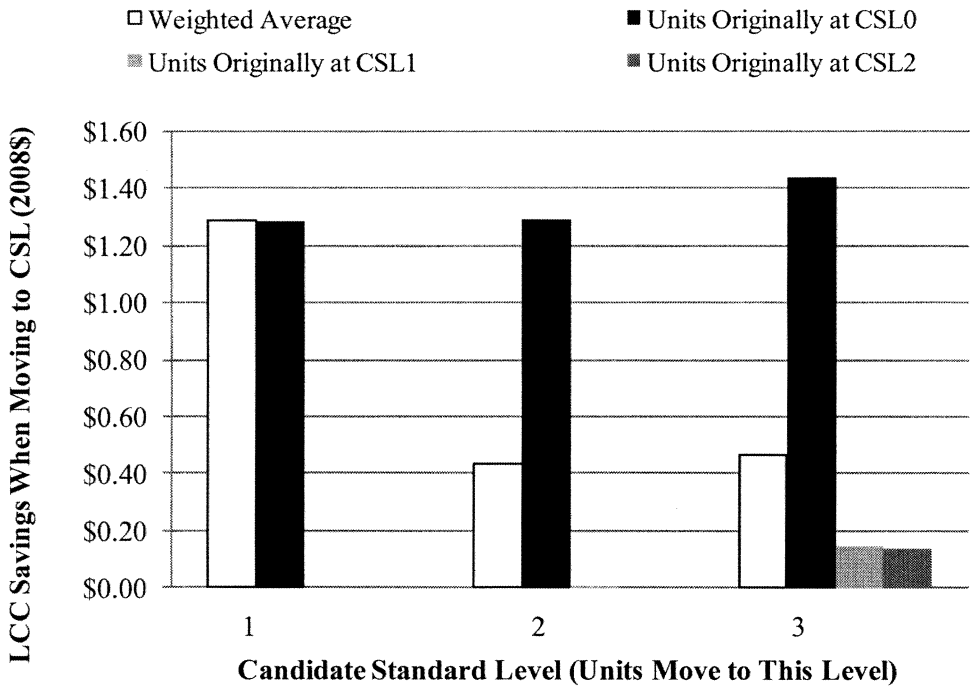


Figure III.2 Life-Cycle Cost Savings for Multiple-Voltage 40-Watt EPS

For the multiple-voltage 40-watt EPS, all consumers would experience positive LCC savings if a standard were set at CSL 1, CSL 2, or CSL 3. The weighted-average LCC savings for a standard at CSL 2 is approximately one-third of the weighted-average LCC savings for a standard at CSL 1 because 50 percent of the market is at a CSL 1 baseline EPS and consumers replacing CSL 1 EPSs with CSL 2 EPSs would experience LCC savings of about $0.01.

b. Multiple-Voltage EPS (203-Watt Video Game)

DOE also analyzed a multiple-voltage EPS with an output power of 203 watts, designed for use with a video game console. Table III.2 and Figure III.3 present the results for this EPS.

TABLE III.2—LCC AND PAYBACK PERIOD RESULTS FOR MULTIPLE-VOLTAGE 203-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL	Conversion efficiency	No-load power	Percent of market already at CSL	Consumer purchase price	Operating cost	LCC	Weighted-average life-cycle cost savings	Weighted-average payback period
CSL	*%*	*W*	*%*	*2008$*	*2008$/year*	*2008$*	*2008$*	*year*
0	82	12.3	5	19.08	14.87	82.78	.....	.....
1	86	0.4	95	28.12	3.82	44.49	38.28	0.8
2	86	0.3	0	28.49	3.76	44.62	1.79	6.1
3	89	0.3	0	38.29	3.14	51.73	−5.32	14.2

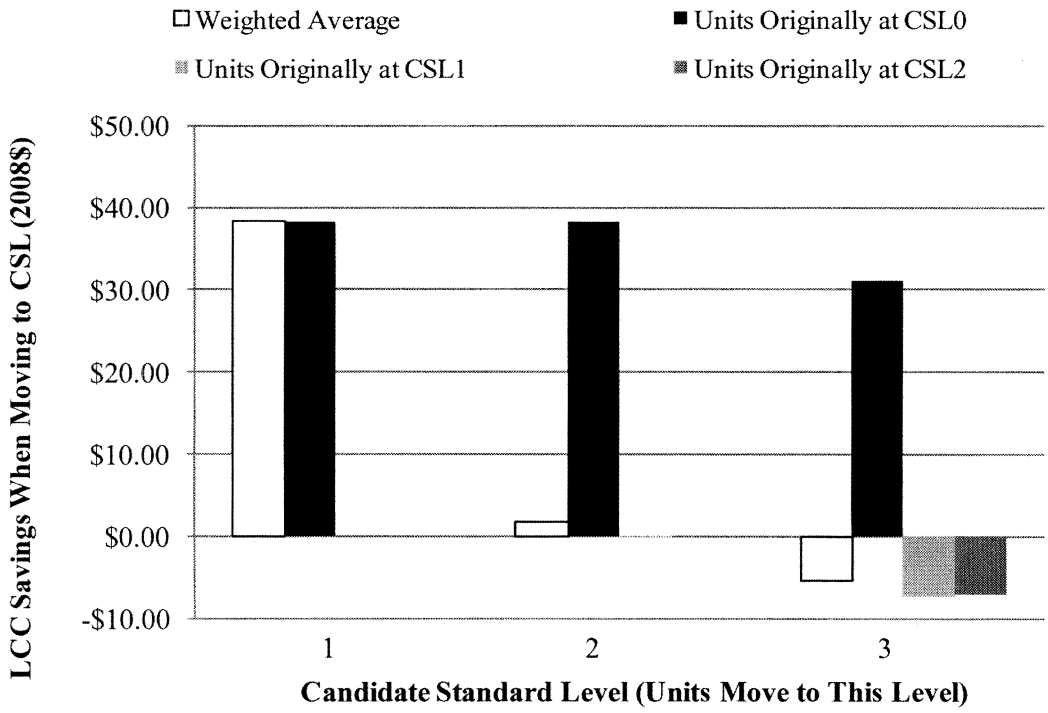


Figure III.3 Life-Cycle Cost Savings for Multiple-Voltage 203-Watt EPS

All consumers would experience positive LCC savings if a standard were set at CSL 1. Consumers replacing CSL 0 EPSs with CSL 2 EPSs realize LCC savings over 20 times greater than the weighted-average LCC savings. DOE believes that 95 percent of the market currently consists of multiple-voltage 203-watt EPSs at CSL 1, such that consumers replacing a CSL 1 EPSs with an EPS at CSL 2 would realize LCC savings of −$0.13. If a standard were set at CSL 3, only consumers replacing CSL 0 EPSs with CSL 3 EPSs would experience positive LCC savings. Because 95 percent of the market would experience negative LCC savings (−$7.24) under a CSL 3 standard, however, the majority of consumers would not recover the increased efficiency-related consumer purchase price in reduced energy costs over the expected lifetime of the product.

Note that the weighted-average PBP of a standard at CSL 2 is greater than the EPS lifetime of 5 years, even though the weighted-average LCC savings are positive. This is because 95 percent of the market (those replacing EPSs at CSL 1 with EPSs at CSL 2) would experience a PBP of 6.4 years if a standard were imposed at CSL 2, while 5 percent of the market (those replacing EPSs at CSL 0 with EPSs at CSL 2) would experience a PBP of 0.8 years.

c. High-Power EPS (345-Watt Ham Radio)

DOE analyzed a high-power EPS that is used in amateur radio applications and has an output power of 345 watts. Table III.3 and Figure III.4 presents the results for this EPS.

TABLE III.3—LCC AND PAYBACK PERIOD RESULTS FOR HIGH POWER 345-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL	Conversion efficiency	No-load power	Percent of market already at CSL	Consumer purchase price	Operating cost	LCC	Weighted-average life-cycle cost savings	Weighted-average payback period
CSL	*%*	*W*	*%*	*2008$*	*2008$/year*	*2008$*	*2008$*	*year*
0	62	15.4	60	208.10	16.20	331.75	.....	.....
1	81	6.0	40	60.71	6.17	107.81	223.95	N/A
2	84	1.5	0	66.12	5.09	104.93	137.24	N/A
3	85	0.5	0	76.37	4.50	110.68	131.49	N/A

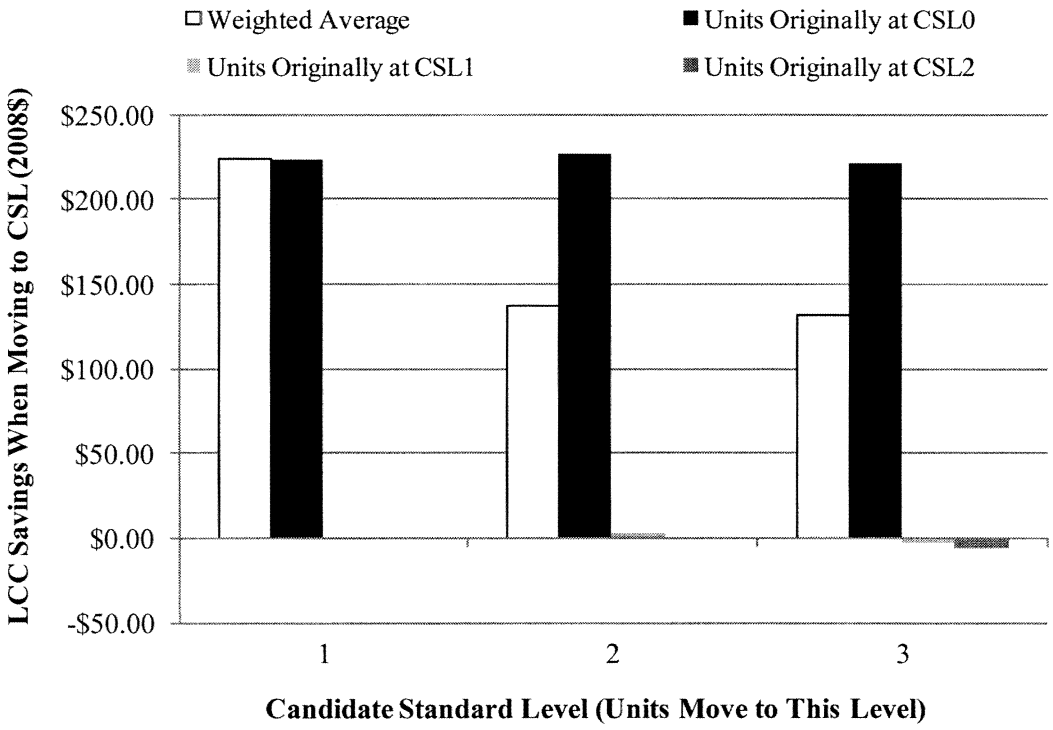


Figure III.4 Life-Cycle Cost Savings for Multiple-Voltage 203-Watt EPS

Based on market research, DOE estimated that no consumers own high-power EPSs at CSL 2 or CSL 3. Note also that there is no weighted-average PBP at any CSL because consumers replacing EPSs at CSL 0 would immediately realize savings due to the lower efficiency-related consumer purchase prices of the EPSs at higher CSLs. DOE assumed that consumers owning EPSs at CSL 0 are 60 percent of the market.

d. Medical EPS (18-Watt Nebulizer)

DOE analyzed a medical EPS that is used with a nebulizer and has an output voltage of 18 watts. Table III.4 and Figure III.5 present the results for this EPS.

TABLE III.4—LCC AND PAYBACK PERIOD RESULTS FOR MEDICAL 18-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL	Conversion efficiency	No-load power	Percent of market already at CSL	Consumer purchase price	Operating cost	LCC	Weighted-average life-cycle cost savings	Weighted-average payback period
CSL	*%*	*W*	*%*	*2008$*	*2008$/year*	*2008$*	*2008$*	*year*
0	66	0.6	25	10.62	4.74	40.95	.....	.....
1	76	0.5	25	13.04	2.99	32.13	8.82	1.4
2	80	0.3	50	13.04	2.28	27.60	8.94	0.5
3	85	0.2	0	20.53	1.60	30.79	1.28	7.7

Situation before standards							Standard at CSL	
Standard at CSL	Conversion efficiency	No-load power	Percent of market already at CSL	Consumer purchase price	Operating cost	LCC	Weighted-average life-cycle cost savings	Weighted-average payback period
CSL	*%*	*W*	*%*	*2008$*	*2008$/year*	*2008$*	*2008$*	*year*
0	66	0.6	25	10.62	4.74	40.95	.....	.....
1	76	0.5	25	13.04	2.99	32.13	8.82	1.4
2	80	0.3	50	13.04	2.28	27.60	8.94	0.5
3	85	0.2	0	20.53	1.60	30.79	1.28	7.7

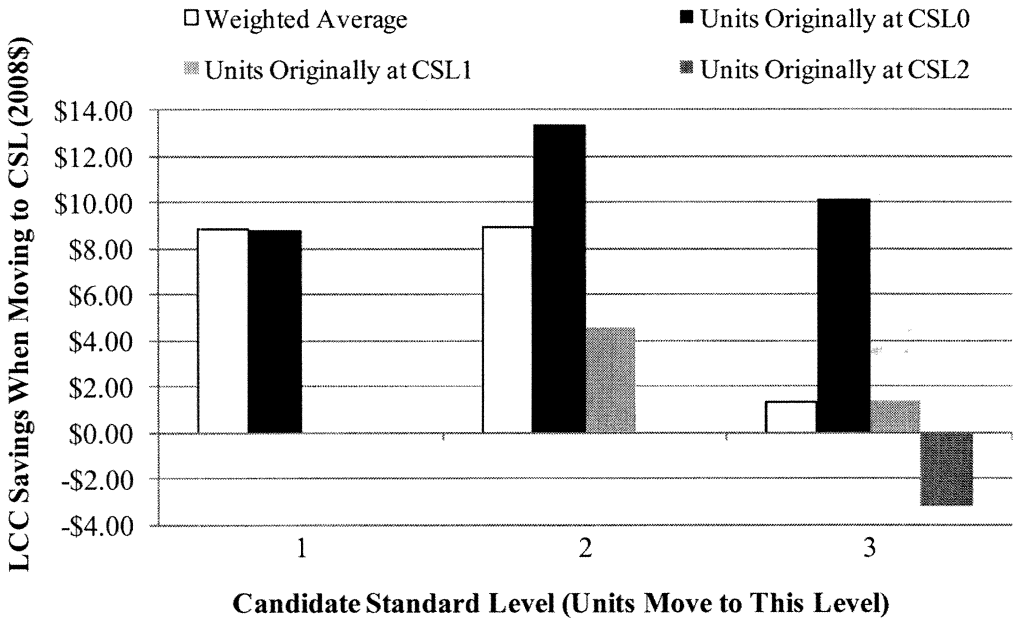


Figure III.5 Life-Cycle Cost Savings for Medical 18-Watt EPS

All consumers purchasing medical 18-watt EPSs would experience positive LCC savings if a standard were set at CSL 1 or CSL 2. The least weighted-average LCC savings would be experienced under a standard at CSL 3. This is because if a standard were set at CSL 3, consumers replacing CSL 2 EPSs with EPSs at CSL 3 would experience negative LCC savings of −$3.19, lowering the weighted average.

e. EPSs for BCs (1.8-Watt Vacuum)

DOE analyzed two EPSs for BCs; one of them is designed for a rechargeable hand-vacuum and has an output power of 1.8 watts. Table III.5 and Figure III.6 present the results for this EPS.

TABLE III.5—LCC AND PAYBACK PERIOD RESULTS FOR 1.8-WATT EPS FOR BCS

Situation before standards							Standard at CSL	
Standard at CSL	Conversion efficiency	No-load power	Percent of market already at CSL	Consumer purchase price	Operating cost	LCC	Weighted-average life-cycle cost savings	Weighted-average payback period
CSL	*%*	*W*	*%*	*2008$*	*2008$/year*	*2008$*	*2008$*	*year*
0	24	1.9	30	3.07	2.15	12.27	.....	.....
1	45	0.8	50	3.52	0.84	7.11	5.17	0.3
2	55	0.5	20	3.52	0.55	5.89	3.15	0.1
3	66	0.3	0	3.52	0.35	5.03	3.38	0.1

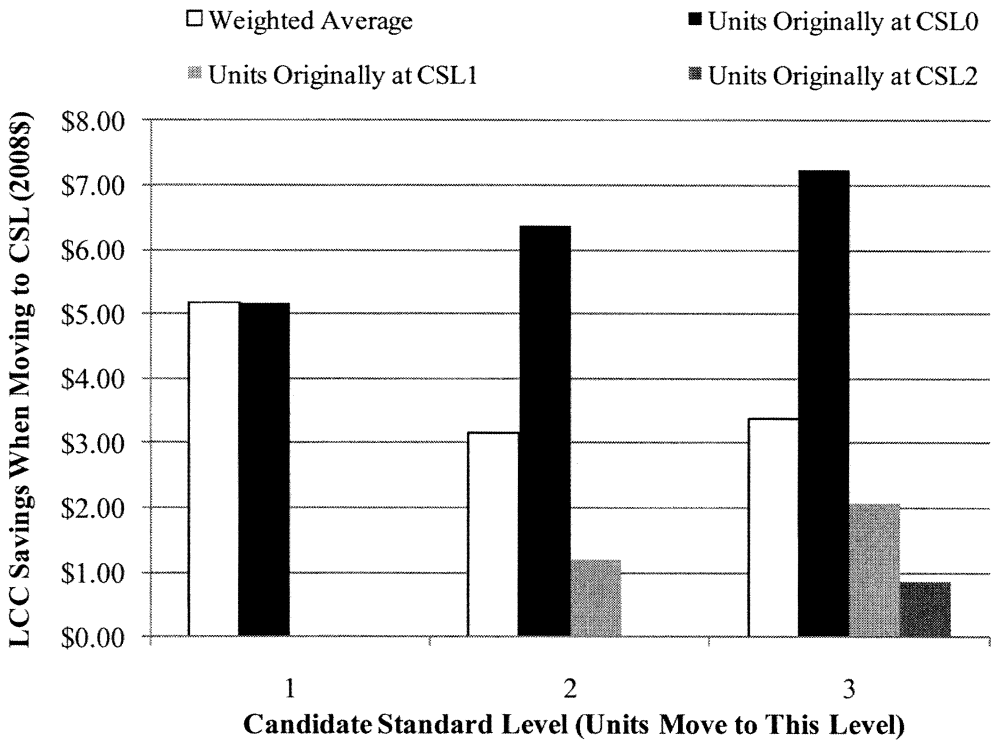


Figure III.6 Life-Cycle Cost Savings for 1.8-Watt EPS for BCs

Consumers would experience positive LCC savings for a 1.8-watt EPS for BCs if a standard were set at any CSL. Consumers replacing CSL 0 EPSs would consistently experience the greatest LCC savings. For a standard at CSL 2, the weighted-average LCC savings would be approximately half as great as the savings experienced by consumers replacing CSL 0 EPSs with EPSs at CSL 2. This is because the majority of the market owns CSL 1 baseline EPSs, and consumers replacing CSL 1 EPSs with CSL 2 EPSs would experience LCC savings that are several times lower ($1.21) than consumers replacing CSL 0 EPSs with CSL 2 EPSs ($6.38). The situation would be similar for a standard set at CSL 3.

f. EPSs for BCs (4.8-Watt DIY Power Tool)

The second EPS for BCs that DOE analyzed was designed for a rechargeable power tool and had an output power of 4.8 watts. Table III.6 and Figure III.7 present the results for this EPS.

TABLE III.6—LCC AND PAYBACK PERIOD RESULTS FOR A 4.8-WATT EPS FOR BCS

Situation before standards							Standard at CSL	
Standard at CSL	Conversion efficiency	No-load power	Percent of market already at CSL	Consumer purchase price	Operating cost	LCC	Weighted-average life-cycle cost savings	Weighted-average payback period
CSL	*%*	*W*	*%*	*2008$*	*2008$/year*	*2008$*	*2008$*	*year*
0	38	1.9	25	4.32	0.81	7.81	.....	.....
1	56	0.8	50	4.94	0.39	6.61	1.19	1.5
2	64	0.5	25	4.94	0.27	6.11	0.90	0.4
3	72	0.3	0	4.94	0.19	5.75	1.03	0.3

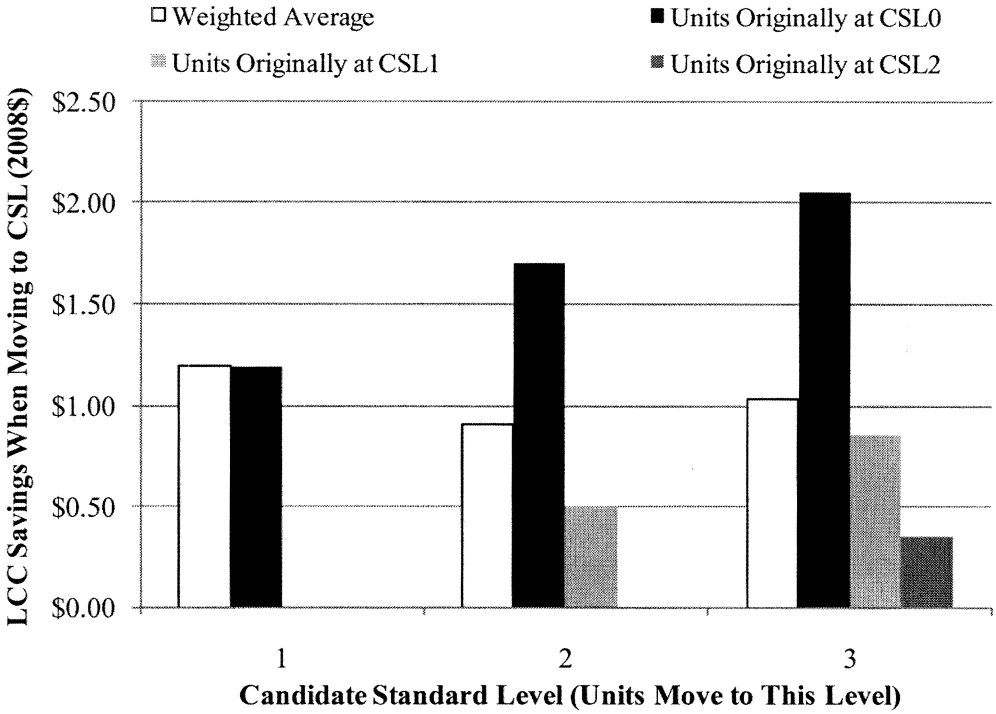


Figure III.7 Life-Cycle Cost Savings for 4.8-Watt EPS for BCs

All consumers would realize positive LCC savings if a standard were set at any CSL. Consumers of 4.8-watt EPS for BCs replacing CSL 0 EPSs would experience the greatest LCC savings. For a standard at CSL 2, the weighted-average LCC savings would be approximately half as great ($0.90) as the savings that would be experienced by consumers replacing CSL 0 EPSs with CSL 2 EPSs ($1.70). This is because the majority of the market owns a baseline EPS at CSL 1, and consumers replacing CSL 1 EPSs with EPSs at CSL 2 would experience LCC savings that are several times lower ($0.51) than consumers replacing CSL 0 EPSs with CSL 2 EPSs. The situation would be similar for a standard set at CSL 3.

B. National Impact Analysis

Table III.7 gives a range of values for energy savings potential for each type of EPS at each CSL. These ranges show the sensitivity of the simulation model to varying assumptions about the future. The lower energy savings estimates assume that the energy efficiency of non-Class A EPSs would improve over time due to factors other than a Federal standard. Conversely, the higher estimates assume energy efficiency would not improve over time. DOE also estimated the net present value of energy savings and incremental consumer costs, assuming discount rates of 3 percent and 7 percent. These estimates of NPV are shown in chapter 6 of the TSD.

TABLE III.7—NATIONAL ENERGY SAVINGS POTENTIAL FROM STANDARDS

Type of EPS	Cumulative primary energy savings potential 2013 to 2042 (trillion BTU*)		
	CSL 1	CSL 2	CSL 3
Multi-Voltage for Multifunction Devices	26.21–28.2	46.3–50.4	52.8–56.9
Multi-Voltage for Xbox 360	1.8–30.8	6.0–34.7	39.9–69.5
High Power (>250 W)	0.25–0.32	0.30–0.38	0.33–0.41
For Medical Devices	5.3–9.7	21.4–28.7	42.6–50.6
For Battery Chargers for Floor Care Appliances	0.39–0.69	0.60–0.90	1.09–1.41
For Battery Chargers for Power Tools	0.24–0.44	0.42–0.61	0.63–0.82

*1 Quad = 1,000 trillion BTU.

If a CSL is selected for each type of EPS to maximize energy savings, subject to the constraint that the NPV be non-negative, total primary energy savings across all types of non-Class A EPS could be as much as 141 trillion Btu or 0.14 quads over 30 years. CSL 3 yields maximum energy savings and has a positive NPV (both at the 3-percent and 7-percent discount rates) for all EPS types except multiple-voltage EPSs for the Xbox 360. For multiple-voltage EPSs for the Xbox 360, CSL 2 has a positive NPV in one base case but a negative NPV in the other. Thus, to estimate energy savings potential across all types of non-Class A EPS, DOE selected CSL 1 for this one type of EPS. Table III.8 shows the contribution of each EPS type to total savings potential and the NPV of a standard set at the selected CSL. Notably, most of the energy savings comes from increasing the efficiency of

EPSs for medical devices and multiple-voltage EPSs for multifunction devices.

TABLE III.8—ENERGY SAVINGS POTENTIAL WHEN CSLS ARE SELECTED TO MAXIMIZE ENERGY SAVINGS

Type of EPS	CSL	Energy savings potential 2013 to 2042 (trillion BTU*)	Net present value 2013 to 2042 ($ million)	
			3% discount rate	7% discount rate
Multi-Voltage for Multifunction Devices	3	52.8–56.9	156–174	76–85
Multi-Voltage for Xbox 360	1	1.8–30.8	13–189	9–101
High Output Power (>250 W)	3	0.33–0.41	2.4–2.9	1.2–1.5
For Medical Devices	3	42.6–50.6	81–130	27–50
For Battery Chargers for Cordless Handheld Vacuums	3	1.09–1.41	8.0–10.1	4.5–5.6
For Battery Chargers for Power Tools	3	0.63–0.82	4.1–5.1	2.3–2.8
Total		99–141	264–512	120–245

* 1 Quad = 1,000 trillion BTU.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget has determined that today's regulatory action is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866. Therefore, this action is not subject to OIRA review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov.*

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

Today's proposed rule, if promulgated, would set no standards; it would only positively determine that future standards may be warranted and should be explored in an energy conservation standards rulemaking. Economic impacts on small entities would be considered in the context of such a rulemaking. On the basis of the foregoing, DOE certifies that the proposed rule, if promulgated, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking, which proposes to determine that the development of energy efficiency standards for non-Class A EPS is warranted, will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

In this notice, DOE proposes to positively determine that future standards may be warranted and should be explored in an energy conservation standards rulemaking. DOE has determined that review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.;* NEPA) is not required at this time. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated'' (10 CFR 1021.213(b)). Because this proposed rule would only determine that future standards may be warranted, but would not itself propose to set any standard, DOE has determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it would not preempt State law or have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of

new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically 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. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*).

Today's proposed rule, if promulgated, would not result in expenditures of $100 million or more in a given year by the external power supply industries affected by this rulemaking. This is because today's proposed rule sets no standards; it only positively determines that future standards may be warranted and should be explored in an energy conservation standards rulemaking. The proposed rule also does not contain a Federal intergovernmental mandate. Thus, DOE is not required by UMRA to prepare a written statement assessing the costs, benefits, and other effects of the proposed rule on the national economy.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action proposing to determine that development of energy efficiency standards for non-Class A EPS is warranted would not have a significant adverse effect on the supply, distribution, or use of energy. The OIRA Administrator has also not designated this rulemaking as a significant energy action. Therefore, DOE has determined that this proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664. (January 14, 2005) The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information.'' The Bulletin defines ''influential scientific information'' as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public

policies or private sector decisions.'' 70 FR 2667 (January 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice or any aspect of the rulemaking no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine, by December 19, 2009, whether energy conservation standards for non-Class A EPSs are warranted.

Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. Comments, data, and information submitted to DOE by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comments

Comments are welcome on all aspects of this rulemaking. DOE is particularly interested in receiving comment from interested parties on the following issues as they relate to non-Class A EPSs:

- Applications not included in this determination analysis,
- Product lifetimes,
- Present-year shipments estimates,
- Present-year efficiency distributions,
- Market growth forecasts,
- Usage profiles,
- Technology options for increasing efficiency,
- Costs related to increasing efficiency,
- Unit energy consumption calculations and values,
- Prevalence of on/off switches,
- Prevalence of charge control in wall adapters for motor-operated, battery-charged products,
- Circuitry designs used in cradle chargers, and
- Alternative sources, databases, and methodologies for the analyses and inputs used in this determination.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on October 23, 2009.

Cathy Zoi,

Assistant Secretary,

Energy Efficiency and Renewable Energy.

[FR Doc. E9–26192 Filed 11–2–09; 8:45 am]

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Federal Register

Tuesday,
November 3, 2009

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Cirsium loncholepis (La Graciosa Thistle); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0078]
99210–1117–0000–B4

[RIN 1018–AV03]

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for *Cirsium loncholepis* (La Graciosa Thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating final revised critical habitat for *Cirsium loncholepis* (La Graciosa thistle). We are designating approximately 24,103 acres (ac) (9,754 hectares (ha)) of habitat in San Luis Obispo and Santa Barbara Counties, California, as critical habitat for *C. loncholepis*. This final revised designation constitutes a reduction of approximately 16,986 ac (6,873 ha) from the 2004 designation of critical habitat for *C. loncholepis*.

DATES: This rule becomes effective on December 3, 2009.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat will be available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/ventura/*. Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644-1766; facsimile 805/644-3958).

FOR FURTHER INFORMATION CONTACT: Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644-1766; facsimile 805/644-3958). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat for *Cirsium loncholepis* in this final rule. For more information on the taxonomy, biology, and ecology of *C. loncholepis*, refer to the final listing rule published in the **Federal Register** (FR) on March 20, 2000 (65 FR 14888), the final designation of critical habitat for *C. loncholepis* published on March 17, 2004 (69 FR 12553), the proposed revised designation of critical habitat published in the **Federal Register** on August 6, 2008 (73 FR 45806), and the March 10, 2009, availability of the draft economic analysis (DEA) (74 FR 10211).

Species Description, Life History, Distribution, Ecology, and Habitat

We did not receive any new substantial information pertaining to the description, life history, distribution, ecology, or habitat of *Cirsium loncholepis* following the 2008 proposed revised designation of critical habitat for this species. Therefore, please refer to the final listing rule published in the **Federal Register** on March 20, 2000 (65 FR 14888), and the proposed revised designation of critical habitat published on August 6, 2008 (73 FR 45806), for a discussion of the species' description, life history, distribution, ecology, and habitat.

Previous Federal Actions

On March 17, 2004, we designated critical habitat for *Cirsium loncholepis* on approximately 41,089 acres (ac) (16,628 hectares (ha)) of land in San Luis Obispo and Santa Barbara Counties, California (69 FR 12553). In March 2005, the Homebuilders Association of Northern California, *et al.*, filed suit against the Service (CV-013630LKK-JFM) challenging final critical habitat rules for several species, including *C. loncholepis*. In March 2006, a settlement was reached that requires the Service to re-evaluate five final critical habitat designations, including critical habitat designated for *C. loncholepis*. The settlement, as subsequently modified on May 18, 2007, stipulated that we would submit any proposed revisions to the *C. loncholepis* designation to the **Federal Register** for publication on or before July 27, 2008, and a final determination by July 27, 2009. By stipulation and order entered May 8, 2009, the deadline for submission of revisions to the final critical habitat designation was extended to on or before October 27, 2009. We published the proposed revisions to the critical habitat designation for *C. loncholepis* in the **Federal Register** on August 6, 2008 (73 FR 45806), and accepted public comments on the proposed revisions until October 6, 2008.

On March 10, 2009, we published in the **Federal Register** a notice of availability (NOA) of the DEA (dated January 16, 2009), and opened the second public comment period on the proposed designation of revised critical habitat (74 FR 10211). This final rule completes our obligations under the March 23, 2006, settlement agreement regarding *Cirsium loncholepis*. For a discussion of additional information on previous Federal actions concerning *C. loncholepis*, refer to the final listing rule published on March 20, 2000 (65 FR 14888), and the final designation of critical habitat published on March 17, 2004 (69 FR 12553).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designation of critical habitat for *Cirsium loncholepis* during two comment periods. The first comment period opened August 6, 2008 (73 FR 45806), associated with the publication of the proposed rule, and closed October 6, 2008. The second comment period opened March 10, 2009 (74 FR 10211), associated with the availability of the DEA, and closed April 9, 2009. During these two public comment periods, we contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule to revise critical habitat for this species and the associated DEA.

During the first public comment period, we received 16 comments directly addressing the proposed revision of critical habitat. We received one request for a public hearing, which was subsequently retracted. During the second public comment period, we received 16 comments directly addressing the proposed revision of critical habitat for this species or the DEA.

Peer Review

In accordance with our policy on peer review for activities under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), 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 it occurs, and conservation biology principles pertinent to the species. We received responses from five of the peer reviewers. The peer reviewers generally concurred with our methods and conclusions and indicated that the Service did a thorough job of delineating critical habitat using the best available scientific information.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the designation of critical habitat for *Cirsium loncholepis*. All public comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: One peer reviewer noted that several areas beyond those proposed for designation as critical habitat contain habitat and features important for recovery of *Cirsium loncholepis*. Specifically, Guadalupe Lake was (and sometimes still is) the largest seasonal lake on the floor of the Santa Maria Valley, that it still persists today, and that it is likely that *C. loncholepis* was associated with this feature and its surrounding wetlands, as well as swales on the Orcutt Terrace. The commenter added that restoration of Guadalupe Lake (hydrology and vegetation) should be a primary focus of conservation efforts for *C. loncholepis* in this portion of the Santa Maria Valley and Orcutt Creek and that Unit 2 should be expanded to include Guadalupe Lake. Three additional areas that the peer reviewer recommended for inclusion in the critical habitat designation are: (1) The Mussel Rock dune sheet that contains dune swale wetlands; (2) the coastal mesa of Burton Mesa (south of San Antonio Creek), which has suitable *Cirsium* habitat and would provide connectivity between San Antonio Terrace and the Santa Ynez River; and (3) the interior portions of the Orcutt Terrace Dune Sheet that contain vernal pools and vernal pool complexes and support other listed ''wetland'' species (specifically the federally endangered California tiger salamander (*Ambystoma californiense*)). The interior portions of the Orcutt Terrace Dune Sheet contain areas such as Guadalupe Lake, Green Canyon, ''Bradley Lake,'' and ''West Bradley Lake'' and would provide an excellent patchwork of open space areas for dispersal of *C. loncholepis* seed and connectivity via wind and hydrological processes.

Our Response: We determined that these four areas (Guadalupe Lake, the remaining portions of the Mussel Rock Dune Sheet, Burton Mesa (south of San Antonio Creek), and interior portions of the Orcutt Terrace Dune Sheet) are important for recovery but not essential for the conservation of *Cirsium loncholepis*. We acknowledge that these areas do contain suitable habitat and the primary constituent elements (PCEs) for the species, but not in the quantity, quality, and spatial arrangement to make them essential for the conservation of the species. As opportunities arise, we will work with local landowners to advance the recovery of *C. loncholepis* in these areas by increasing connectivity via suitable habitat patches for *C. loncholepis* and seed dispersal. We are designating as critical habitat areas along Orcutt Creek that contain the highest quality areas of suitable habitat that will serve as ''stepping stone'' habitats for *C. loncholepis* between the Guadalupe Dunes and Santa Maria River areas, and between the formerly occupied San Antonio Creek and Santa Ynez River areas.

Comment 2: All of the peer reviewers commented that the proposed designation of critical habitat uses the best available scientific information to develop the best possible habitat design to prevent extinction of the species and indicated that it was an exhaustive presentation of the facts supporting revisions to critical habitat for *Cirsium loncholepis*. They concurred that the current range of *C. loncholepis* is not sufficient to ensure (or even make likely) the continued existence of the species and that the inclusion of unoccupied habitat in the proposed critical habitat designation was justified scientifically. They concurred that all proposed units are important for recovery: Units 1 and 2 are occupied; Unit 3 was occupied, has important recovery potential, and serves as an extremely important area to connect multiple populations to reduce extinction risk for the species; and Units 4, 5, and 6 complete these linkages and have high recovery potential for the species.

Our Response: The peer reviewers confirmed the importance of the areas that we identified as containing features essential to the conservation of the species and consequently delineated as critical habitat. Additionally, we added details and supplemental information about *Cirsium loncholepis*, and special management needs provided by the peer reviewers, in the Special Management Considerations or Protection, Primary Constituent Elements, and Final Critical Habitat Designation sections of this rule.

Comment 3: Several peer reviewers had comments and provided additional information regarding (1) the importance of long-distance dispersal for this species in relation to habitat fragmentation, (2) the layout of critical habitat boundaries, (3) the PCEs, and (4) the importance of conserving the long-distance dispersal vectors within and between the critical habitat units (and suitable habitat patches) for the conservation of the species. There was a consensus among the peer reviewers that habitat fragmentation increases the threats to a species, and that it increases the risk of extirpation and extinction events. They discussed that the best way to conserve species affected by habitat fragmentation is to increase the total size of available habitat or connect remaining available habitat with habitat linkages. They further discussed that reconnections (of available and suitable habitat) can ameliorate the threats associated with small population sizes by promoting dispersal and geneflow.

Our Response: We appreciate the peer reviewers' comments and information regarding long-distance dispersal and *Cirsium loncholepis*, and we have considered the peer reviewers' comments and recommendations regarding habitat fragmentation, connectivity, and long-distance dispersal in the development of this final revised critical habitat designation. We have incorporated them into the rule under the section entitled Primary Constituent Elements.

Comment 4: One peer reviewer mentioned that the County of Santa Barbara requires a minimum 100-foot riparian buffer along creeks in rural areas, which includes agriculture, and that pulling back agriculture to create this minimum buffer could make conditions favorable for *Cirsium loncholepis* along riparian areas in the critical habitat units designated in Santa Barbara County.

Our Response: We thank the reviewer for this information. We checked with the County of Santa Barbara (Mashore 2009a, unpaginated, 2009b, unpaginated; Mooney 2009, unpaginated) and were informed that the County's Coastal Land Use Plan (Policy 9-37; also cross-referenced in Sec. 35-97.19 of the County's Coastal Ordinance) pertains to review of documents under the California Environmental Quality Act and states:

The minimum buffer strip for streams in rural areas shall be presumptively 100 feet, and for streams in urban areas, 50 feet. These minimum buffers may be adjusted upward or downward on a case-by-case basis. The buffer shall be established based on an investigation of the following factors and after consultation with the California Department of Fish and Game and California Regional Water Quality Control Board in order to protect the biological productivity and water quality of streams: a.) soil type and stability of stream corridors, b.) how surface water filters into the ground, c.) slope of land on either side of the stream, and d.) location of the 100–year

flood plain boundary. Riparian vegetation shall be protected and shall be included in the buffer. Where riparian vegetation has previously been removed, except for channelization, the buffer shall allow for the re-establishment of riparian vegetation to its prior extent to the greatest degree possible.

We concur that pulling back the footprint of areas utilized for agricultural production to create this minimum buffer could make conditions favorable for *Cirsium loncholepis* along riparian areas in Santa Barbara County. We will continue to work closely with the County of Santa Barbara and landowners in these areas to provide for the conservation of *C. loncholepis*.

Comment 5: One peer reviewer mentioned that there may be areas of active row crop agriculture within the boundaries of proposed critical habitat in Unit 3 and that we should check to avoid their inclusion in critical habitat.

Our Response: We acknowledge that there may be areas with active row crops in Unit 3 (and other critical habitat units). When determining the revisions to critical habitat boundaries within this final rule, we made every effort to avoid including developed areas, such as buildings, paved areas, and other structures, as well as tilled fields and row crops that lack the PCEs for *Cirsium loncholepis* in the appropriate quantity and spatial arrangement essential to the conservation of the species. We identified critical habitat for this species based on several criteria. Application of these criteria (please see the Criteria Used To Identify Critical Habitat section of this final rule) resulted in the determination of the physical and biological features that are essential to the conservation of this species, as identified by the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the species. Thus, not all areas supporting the identified PCEs will meet the definition of critical habitat. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final critical habitat are excluded by text in this rule and are not designated as critical habitat (please see Criteria Used To Identify Critical Habitat and Final Critical Habitat Designation sections and the unit description and map for Unit 3 in this final rule).

Comment 6: One peer reviewer commented regarding the occupancy status of the Cañada de las Flores Unit. The commenter noted that we considered it to be unoccupied in the proposed revised designation, that the species was last observed in this unit in 1989, that the surveys in 1990 were conducted during a drought year, that the surveys in 2007 were conducted at a bad time of year, and that no sufficient surveys have been conducted here for 17 years. The commenter reasoned that because of the above information and the lack of surveys over a 17–year span, it seemed contradictory to consider this unit unoccupied.

Our Response: Although the last herbarium specimen of this population was collected in 1973 (Consortium of California Herbaria (CCH) 2008, unpaginated), and it was last recorded (by photograph) in 1987 (Thornton 2008, unpaginated), Hendrickson (1990, pp. 1-25) notes that in 1990, Jeanette Sainz reported that at CaCañadantilde;ada de las Flores *Cirsium loncholepis* plants ''...fluctuate every year; however, she has never known them to be absent completely as we found this year.'' Based on this information, we concluded that at the time of listing in 2000, Unit 3, Cañada de las Flores was occupied by *C. loncholepis*. We reached the same conclusion when we designated critical habitat in 2004. We revisited this population with Jeanette Sainz in November 2007. No *C. loncholepis* plants were observed, some habitat conditions at the site have declined due to grazing intensity, but the basic suitable habitat conditions are still present (e.g., freshwater seeps and native vegetation) (Elvin 2007a, unpaginated). Based on one peer reviewer comment and a public comment regarding the occupancy status of Cañada de las Flores, we requested permission to visit the site in 2008 during the blooming season for this species to try to obtain more data regarding the occupancy status of this site; however, we were not able to obtain permission from the current owner. The owner had biologists conduct surveys in March of 2009, with no *C. loncholepis* being observed (Kisner 2009, unpaginated). Therefore, the best scientific and commercial data available indicate that this site was last documented as occupied in 1987 (Thornton 2008, unpaginated) and last reported in 1989 (Hendrickson 1990, pp. 1-25). Therefore, based on the continued lack of observation of *C. loncholepis* since 1989 (Hendrickson 1990, pp. 1-25; 65 FR 14888, March 20, 2000; CNDDB 2007, unpaginated; Elvin 2007b, unpaginated; CCH 2008, unpaginated; Thornton 2008, unpaginated), we consider Cañada de las Flores to be unoccupied for the purposes of this rule.

Comment 7: One peer reviewer strongly suggested that additional management actions be undertaken for the species, specifically that the species be reintroduced into the unoccupied Units 3, 4, 5, and 6.

Our Response: We agree that the recommended additional management actions, specifically reintroducing the species into unoccupied areas with suitable habitat throughout the range of the species, would benefit the species and contribute to its conservation. While we do not develop management strategies as part of the process of designating critical habitat, we do consider site-specific management strategies important to the conservation of the species and work with landowners, researchers, and others to develop and implement them as part of the recovery process.

Comment 8: One peer reviewer commented that historically it is likely that *Cirsium loncholepis* had a much broader distribution in (1) Los Alamos Valley, specifically along the broad floodplain of San Antonio Creek and in the numerous hillside seeps and sag ponds associated with the southeast-northwest trending fault line that created this valley, and (2) the rest of the San Antonio Creek floodplain (e.g., Barka Slough); therefore the reviewer suggested that we emphasize conservation efforts in these areas.

Our Response: We concur that it is possible that *Cirsium loncholepis* was more widely distributed in the San Antonio Creek watershed. This is why we proposed the areas in Units 3 and 4 and why we are designating lands in these units as critical habitat for *C. loncholepis*. Please see the unit descriptions for Units 3 and 4 for a more indepth discussion of these areas.

Public Comments

Comment 9: One commenter stated that we should not designate critical habitat for a weed.

Our Response: *Cirsium loncholepis* is a rare and endangered native plant. It does not qualify under any criteria as a weed. There are some species within this thistle genus that are ''weedy'' in the sense of growing out of their native habitat; for instance, several species of thistle originally native to Europe have spread across North America. Other thistle species are native but ''weedy'' in the sense that they have the ability to spread aggressively. *Cirsium loncholepis* is not ''weedy'' in either sense, as it is native to a small area of central coastal California, and is not aggressive in colonizing new sites. It is federally listed as endangered, and we are

required under the Act to designate critical habitat for it.

Comment 10: One commenter stated that the designation is based on incomplete data and should not go forward.

Our Response: The Service's Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), establishes procedures and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. We are required, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. See the section of this rule titled Critical Habitat for additional information on these standards. The revised critical habitat designation presented in this rule is based upon the best scientific and commercial information available as required by the Act.

Comment 11: One commenter stated that the rule does not justify designating active cropland in the Santa Maria Valley or urban lands in the Orcutt area, that it is illogical to designate critical habitat on intensely cultivated row crop farms in the western Santa Maria Valley, and that agricultural fields in the Santa Maria Valley do not meet the definition of critical habitat because they lack the PCEs.

Our Response: We attempted to avoid designating agricultural land as much as possible because the PCEs are not present in the appropriate quantity and spatial arrangement essential to the conservation of the species in much of the actively farmed agricultural land. However, within the areas mapped that include agricultural fields, there are pockets of habitat that contain or support the PCEs and are essential to the conservation of the species (e.g., along the untilled margins of fields; along untilled, low-lying swales within fields; and in fields that are temporarily fallow). For example, there are pockets of suitable habitat along Orcutt Creek that contain ''stepping stone'' habitats in and adjacent to agricultural lands. These ''stepping stone'' habitats play an important role in the conservation of this species by providing corridors and intermediate sites with suitable habitats that act as an essential dispersal corridor (along which the species can disperse from coastal sites to other suitable sites farther inland) (Damschen 2008; Trakhtenbrot 2008). Therefore, these areas are essential to the conservation of the species. Some areas within agricultural lands are not essential because they do not contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the species. We made every effort to exclude as many areas as possible that do not meet the definition of critical habitat, but were not able to exclude all of these areas due to the mapping scale utilized. Areas that are within the boundaries of critical habitat, but do not contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the species, are excluded by text in this revision and are not designated as critical habitat (please see the Criteria Used To Identify Critical Habitat and Final Critical Habitat Designation sections and the unit description and map for Unit 2 in this final rule).

Comment 12: One commenter stated that the Service makes the assumption that Orcutt Creek is not impacted by existing urban and agricultural uses and does not account for the fact that Orcutt Creek and other streams are fully impeded to downstream flows and are affected by other threats (e.g., County zoning may permit development within the floodplain with minimal setbacks from creeks, non-point source pollution runoff from agriculture (herbicides, fertilizers) and urban areas, flood control measures).

Our Response: We do not assume that the entire stretch of Orcutt Creek, the Santa Maria River, and their associated watersheds are not impacted by existing uses. We are aware that the watersheds have been adversely affected by urban and agricultural practices and we thank the commenter for pointing out additional threats of which we were not aware to the species. We have included this new information in the Special Management Considerations or Protection and Final Critical Habitat Designation sections of this rule. We believe that the Orcutt Creek area is essential to the conservation of the species because it contains pockets of suitable habitat that act as ''stepping stone'' habitats and are an essential dispersal corridor. For additional information on this topic, please see Comments 5 and 11 and our responses to them.

Comment 13: Three commenters did not feel that we presented sufficient justification to propose unoccupied habitat, specifically areas in Unit 1 and Unit 3, and that it was the intent of Congress to limit the designation of critical habitat to occupied areas, except in unusual circumstances.

Our Response: The Act specifically provides that the Service may designate as critical habitat areas outside of the geographical area occupied by a species at the time it was listed if we determine that those areas are essential for the conservation of the species (section 3(5)(A)(ii) of the Act). By regulation, we can designate as critical habitat areas ''outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)).

The commenters included some supplemental information regarding their statements that unoccupied areas are not essential for the recovery of *Cirsium loncholepis*. Multiple peer reviewers commented that unoccupied areas were essential to the conservation of the species and that it was scientifically sound and justified to designate these areas as critical habitat. After analyzing this supplemental information, we determined that the current range of the species is not sufficient to ensure its conservation and that unoccupied areas (both within and outside the current range of the species) are essential for its conservation. For additional information on this issue, please see Comment 2 and our response to it.

Comment 14: One commenter stated that Unit 3 has different environmental conditions than other units in the following ways: it does not contain PCEs; it is not occupied (because 1987 was the last time that plants were seen); we did not describe why or how Unit 3 is necessary to ensure connectivity in a manner that is ''essential'' for the conservation of the species; in Unit 3 ''...only a very few Thistle plants have ever been found and only a very small percentage of Unit 3 contains the [PCEs] for the Thistle...''; and we did not cite any specific data, studies, or other evidence that demonstrate that Unit 3 is essential for establishing connectivity with areas occupied by *Cirsium loncholepis* and for preserving genetic variability within the species. Therefore it is impossible for the public to generate meaningful comments. One commenter objected to the inclusion of Unit 3.

Our Response: We believe that the final revised designation for *Cirsium loncholepis* accurately contains all specific areas meeting the definition of critical habitat for this species. As discussed in the Criteria Used to Identify Critical Habitat section of the proposed revised designation and this final revised designation, we delineated proposed revised critical habitat for *C. loncholepis* using the following criteria:

(1) Areas occupied by individuals at the time of listing and areas currently occupied by this species;

(2) Habitat providing connectivity between the areas containing the extant populations;

(3) Areas outside the geographical area occupied by the species at the time of listing, but within the historical range of the species, that contain large, continuous blocks of suitable habitat, such as the numerous mesic areas and seeps in and surrounding the lower reaches of the Santa Ynez River;

(4) Important corridors of suitable habitat that connect the large, continuous areas based on seed or pollen dispersal abilities in those corridors, such as the areas along Orcutt Creek between the Guadalupe Dunes and Cañada de las Flores; and

(5) The presence and characteristics of other features that are important to maintain the metapopulation dynamics for *C. loncholepis* in the areas listed in (1) through (4) above (e.g., winds and their relationship to the formation of geographic features, movement patterns for various dispersal agents, watersheds, geology).

Application of these criteria captures the physical and biological features that are essential to the conservation of this species, identified as the species' PCEs laid out in the appropriate quantity and spatial arrangement. Thus, not all areas supporting the identified PCEs will meet the definition of critical habitat. The criteria we used resulted in a critical habitat designation that is representative of the diversity in this species' range and includes both occupied and unoccupied habitat. Some previously occupied areas (such as Cañada de las Flores) may have once represented core populations for this species, but due to its precipitous decline (as discussed in the Primary Constituent Elements section of this rule), we have determined that these areas are still essential for the conservation of this species. We also made a determination that modifications to the critical habitat boundaries in Unit 3 were not warranted.

Data used in the preparation of this final revised designation also indicate that the basic habitat conditions are still present in Unit 3 (e.g., freshwater seeps and native vegetation). Unit 3 occurs at a pivotal location for the species as a whole; it is down-wind from *Cirsium loncholepis* populations in the Santa Maria Valley and areas on San Antonio Terrace (Hunt 2008, unpaginated) and upstream from populations in the San Antonio Valley (e.g., the mouth of San Antonio Creek (one of the potential type locality sites for *C. loncholepis*) and San Antonio Terrace Dunes). The Cañada de las Flores location is essential to maintain connectivity between populations in the Santa Maria Valley and populations in the San Antonio Creek and Santa Ynez Valleys and contains habitat for a core population area. The areas in question meet our criteria used to identify critical habitat (for additional information, please see the Criteria Used to Identify Critical Habitat section below).

Comment 15: One commenter stated that 50 percent of the proposed critical habitat in Unit 3 is already covered by currently designated critical habitat for California tiger salamander; therefore, because the area is already protected and requires consultation under the Act, this rule is redundant.

Our Response: The Act directs us to analyze and determine which areas are essential to the conservation of each species. We analyzed the areas that we determined were essential for *Cirsium loncholepis* in this rule. While there may be overlap in critical habitat boundaries for different species, in this case, the PCEs (and essential habitat components) are different for *C. loncholepis* than they are for California tiger salamander. Therefore the critical habitat determination for California tiger salamander does not describe the same habitat and it does not offer the same protections as the designation of critical habitat for *C. loncholepis*.

Comment 16: One commenter stated that the adoption of the proposed critical habitat rule is subject to compliance with National Environmental Policy Act (NEPA). The Service must comply with NEPA in designating critical habitat as per the Tenth Circuit Court decision (*Catron County Bd. Of Comm'r, N.M.*v. *USFWS*, 75 F.3d 1429).

Our Response: It is our position that, outside the jurisdiction of the Tenth Circuit Court of Appeals, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the Ninth Circuit Court of Appeals (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 516 U.S. 1042 (1996)).

Comment 17: Two commenters stated there are areas within the proposed critical habitat that should not be included in the final designation because they do not contain the PCEs, are not occupied by the species, or otherwise do not meet the definition of critical habitat.

Our Response: Where site-specific information was submitted to us during the comment periods for this revised designation with a rationale as to why an area should not be designated as critical habitat, we evaluated that information in accordance with the definition of critical habitat under to section 3(5)(A) of the Act. This rule notes that there are areas within the boundaries of designated critical habitat that do not contain those biological features essential for the conservation of the species (e.g., roads, buildings, and other areas that do not contain PCEs) and these specific areas are not included in designated critical habitat by text provided in this rule even though they appear to be within the boundaries of designated critical habitat. Please see the individual unit descriptions for discussions of the PCEs and where the unit is occupied by the species.

For additional information regarding Unit 3, please see Comment 14 and our response to it. For additional information regarding Unit 1 and areas in the OHV area of ODSVRA, please see Comment 18 and our response to it and the unit description for Unit 1.

Comment 18: One commenter stated that the Service previously excluded the heavily-used off-highway vehicle (OHV) riding areas within the Oceano Dunes State Vehicular Recreation Area (ODSVRA) in the 2004 final critical habitat designation because the area is not essential for the conservation of *Cirsium loncholepis*. Two commenters objected to the inclusion in proposed critical habitat Unit 1 of large areas on State Park lands within the ODSVRA in proposed critical habitat Unit 1 that are used for OHV recreation on a regular basis.

Our Response: We acknowledge that these areas were not included in the 2004 final rule, but the best available science at that time indicated that *Cirsium loncholepis* was still extant at a number of locations throughout its range. Current information indicates that the species has experienced severe declines in the number of populations, occurrences, and individuals such that areas beyond the species' currently occupied range are essential for its conservation. In the process of analyzing what constitutes critical habitat for the species during this revision, we determined that certain areas within the OHV area met the definition of critical habitat.

In this final revised designation of critical habitat, we have included polygons of critical habitat that contain vegetation that occur and are fenced off

within the OHV riding area of ODSVRA because they are essential to the conservation of the species. The polygons contain habitat patches, including open sand dune swales and vegetation islands. In identifying the areas designated as final revised critical habitat, we delineated the boundaries based on the best available science, with the understanding that this is a dynamic ecosystem, and it has been documented that these vegetation islands move over time (California Geological Society (CGS) 2007, 113 pp.). The habitat patches move up to 120 meters (m) (394 feet (ft)) over a 20–year time frame (CGS 2007, 113 pp.); therefore, we developed a formula to determine the predicted migration of these patches over the next 20 years. For a description of this formula, please see the Criteria Used to Identify Critical Habitat section of this rule.

Following our evaluation of the information provided, we made a determination that modifications to the critical habitat boundaries were warranted in parts of Unit 1. The areas within the habitat patches (including vegetation islands and open sand dune swales) containing PCEs in the appropriate quantity and spatial arrangement necessary to provide the features essential to the conservation of *Cirsium loncholepis* are essential. Therefore, under this rule, we are designating them as critical habitat. However, the areas within the boundaries of these polygons that are outside of the habitat patches (but within the OHV riding area of ODSVRA) and are used on a regular basis for OHV recreation do not currently contain PCEs in the appropriate quantity and spatial arrangement necessary to provide the features essential to the conservation of *C. loncholepis*. We are designating these areas as critical habitat because the vegetation islands will migrate beyond their current boundaries in the foreseeable future, and thus the areas are essential for the conservation of *C. loncholepis*.

These polygons of critical habitat contain suitable habitat and are adjacent to currently occupied and historically occupied sites. The polygons are northwest of a large continuous block of occupied habitat. The Callender Dunes are dominated by moderate to strong winds from the northwest (categorized as greater than 7.47 miles per hour (mph) (12.02 kilometers per hour (kph)) most of the time and throughout the year (U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS) 2008, unpaginated; National Oceanic and Atmospheric Administration Western Regional Climate Center (NOAA) 2007, unpaginated). However, moderate to strong winds from the southeast also occur in this area during parts of the year (November through February), which overlaps with at least 2 months of the approximately 5–month period that seeds are dispersed from the remains of the flowering stalk (August through December). These winds are an essential dispersal vector that helps move *Cirsium loncholepis* seeds between areas of suitable habitat; as a result, the vegetated islands become essential in maintaining connectivity within and between occurrences and populations. Further, several peer reviewers indicated that for fugitive species (i.e., species that move from place to place through time) like *C. loncholepis* that also rely on long-distance dispersal, adjacent occupied and unoccupied suitable habitat is essential for survival. These vegetation islands meet this need for the species, and provide a shifting mosaic of habitats that depend upon geomorphic processes operating across large landscape areas for their maintenance.

In the proposed revised designation, we proposed 714 ac (290 ha) within the OHV area of ODSVRA. In this final rule, we have reduced the number of acres within the OHV area of ODSVRA to 75 ac (30 ha) that are included in critical habitat Unit 1 because we determined that areas with a long-standing history of heavy OHV use did not contain the PCEs in the appropriate quantity and spatial arrangement (see our response to Comment 20). We made every effort to include the essential vegetated island habitats and the areas that they are expected to migrate to in the foreseeable future based on a recent analysis of historical movements of these habitats in the ODSVRA and the geomorphology of the Callender Dunes (CGS 2007, 113 pp.; Cooper 1967, pp. 75-90; Hunt 1993, pp. 5-72; USDA NRCS 2008, unpaginated).

Comment 19: Two commenters discussed the ODSVRA's preparation of an habitat conservation plan (HCP) and concluded that the completion of the HCP will make the critical habitat rule superfluous and unnecessary, as the Service excludes areas if they do not need special management. Therefore, because the species will be addressed in the soon-to-be-released draft HCP for ODSRVA, no special management will be needed in any of the proposed critical habitat areas within ODSVRA.

Our Response: In considering the benefits of including lands in a designation that are covered by a proposed or current HCP or other management plan, we evaluate a number of factors to help us determine if the plan provides equivalent or greater conservation benefit than would likely result from consultation on a designation. These criteria are discussed in the Application of Section 4(b)(2) of the Act section below.

Because the HCP under development for the ODSVRA is still in draft form, there is uncertainty concerning what actions may be proposed or committed to for conservation of the species, and there is uncertainty concerning whether any actions proposed will be effective. Accordingly, the draft HCP does not currently meet the criteria necessary for us to exclude these areas on the basis of the HCP under section 4(b)(2) of the Act.

Comment 20: The California Department of Parks and Recreation (CDPR) requested that we exclude from critical habitat 820 acres of lands they manage (in and adjacent to the OHV area) at the ODSVRA. They requested that even if the lands in ODSVRA can be considered critical habitat, the Service exclude them under section 4(b)(2) of the Act for the following reasons:

(1) There is a long-standing history of OHV use of Oceano Dunes;

(2) The State law that established ODSVRA mandated the area be used for OHV recreation;

(3) Critical habitat is not needed because CDPR has a rare plant protection program in place to manage populations within ODSVRA and if *Cirsium loncholepis* is found there in the future, those plants would be protected as part of the rare plant protection program; and

(4) Economic impacts need to be considered, and they outweigh the benefits of inclusion of this area.

Our Response: We analyzed the entire area within ODSVRA that was proposed as critical habitat in the proposed revised critical habitat designation. We determined that approximately 639 ac (259 ha) of the 714 ac proposed as critical habitat do not contain the PCEs in the appropriate quantity and spatial arrangement that are essential for the conservation of the species. We are not designating as critical habitat these approximately 639 ac. Regarding the four points outlined in the CDPR comment letter (Zilke 2008):

(1) The Act directs us to analyze areas essential to the conservation of the species, and section 4(b)(2) of the Act states that the Secretary may exclude any area if he determines that the benefits of exclusion outweigh the benefits of specifying an area as critical habitat, unless he determines, based on the best scientific and commercial data available, that failure to designate such

area as critical habitat will result in the extinction of the species concerned. We analyzed the benefits of exclusion and the benefits of inclusion, and determined that some of the areas within ODSVRA were essential to the conservation of the species (see the unit description for Unit 1 and the map for Unit 1). Some of the areas within ODSVRA do not contain PCEs in the appropriate quantity and spatial arrangement that are essential for the conservation of the species. In designating those areas we determined to be essential to the conservation of the species, we made every effort to avoid those areas that do not contain the physical and biological features in the appropriate quantity and spatial arrangement. We determined that areas with a long-standing history of heavy OHV use did not contain the PCEs in the appropriate quantity and spatial arrangement (see our response to Comment 18).

(2) We further determined that these areas, as designated, do not contradict the State law that established ODSVRA mandating the area be used for OHV recreation (see our responses to Comments 17 and 18 and our description of these areas in the unit description).

(3) In considering whether to exclude an area from designation as critical habitat on the basis of a management plan (or rare plant protection program), we evaluate a number of factors to help us determine if the plan provides equivalent or greater conservation benefit than would likely result from consultation on a designation.

These factors include: (A) Whether the plan is complete and provides protection from destruction or adverse modification; (B) whether there is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and (C) whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology. The CDPR has not provided us with a management plan that meets all of those conditions necessary for us to exclude these areas from the designation.

(4) We analyzed the benefits of exclusion and the benefits of inclusion of the remaining approximately 75 ac (30 ha) in the OHV area of ODSVRA. We determined that the remaining approximately 75 ac (30 ha) are essential to the conservation of the species, and the benefits of exclusion do not outweigh the benefits of inclusion. Accordingly, we are designating these approximately 75 ac (30 ha) as critical habitat.

See our responses to Comments 17 and 18 and the following sections for a more indepth discussion of these issues: Criteria Used To Identify Critical Habitat, the unit description for Unit 1, and Relationship of Critical Habitat to Lands Managed by the California Department of Parks and Recreation (CDPR).

Comment 21: One commenter, citing case decisions, stated a general comment that the Service's position that an area does not need special management where another conservation plan is in place is both illogical and legally invalid and the *Cirsium loncholepis* habitat within the boundaries of any conservation plan also meets the definition of critical habitat precisely because it requires the special management purportedly provided by the conservation plans.

Our Response: The comment references a former Service interpretation as to the interrelationship of existing conservation plans with the definition of critical habitat in the Act. The definition states, in part, that ''critical habitat'' means (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) which may require special management considerations or protection (section 3(5)(A)(i) of the Act). Thus in determining critical habitat for an area occupied by the species at the time of listing, the Service looks at whether the physical or biological features of the area are both essential to the conservation of the species and may require special management considerations or protections. The commenter suggests that habitat within the boundaries of any conservation plan meets the definition of critical habitat. For that to be true, such an area must also have the physical and biological features essential to the conservation of the species to be considered critical habitat. The Service did not, in the proposed revised designation, suggest that areas with existing special management would not meet the definition of critical habitat. However, areas subject to a conservation plan and thus subject to special management, may be considered for exclusion from the critical habitat designation if the plan meets certain criteria (see the Application of Section 4(b)(2) of the Act section below for a discussion of these criteria).

Comment 22: Two commenters were concerned that new PCEs were included that do not require a water source, that these PCEs and areas without water or a water source are not essential, and that the description of PCE 4 is ''insufficiently specific'' and includes every drainage within the region.

Our Response: Each PCE and area proposed for designation as critical habitat can be essential for a different reason or a different part of the plant's life cycle. The dispersal of genetic material among and between populations is essential for the conservation and recovery of this species (see our response to Comment 3) and is covered by PCE 4, which includes dispersal by both wind and water. Water is not essential to disperse the plant's seeds by wind, but dispersal by wind is essential for the conservation and recovery of the species. Also, the plant does grow and has been documented in areas that are ''dry,'' such as on the top of ridges in the Guadalupe Oil Fields to the south of the Guadalupe-Nipomo Dunes National Wildlife Refuge. We believe the word drainage is adequately specific, as it eliminates many upland and dry areas. Drainages within the boundaries of the revised critical habitat designation all contain suitable habitat and are important dispersal features, which are what we focused on in developing the revised critical habitat designation for this species. Drainages outside the boundaries of critical habitat, but within the region, may be important, but we are not designating them as critical habitat.

Comment 23: One commenter stated that the only effective measure to ensure the recovery of the species (*Cirsium loncholepis*) in agricultural and urban areas is to preclude agricultural practices and production and urban development and that this constitutes a ''taking'' of private property; another commenter asked us to hold off interference in the private sector, stating that designating critical habitat [for *C. loncholepis*] will interfere with agriculture to feed all of the people.

Our Response: Critical habitat has a direct regulatory impact only on Federal actions or actions requiring Federal authorization, permitting, or funding. Therefore, a critical habitat designation on private land has no regulatory impact on actions carried out by landowners unless they seek Federal funding or a Federal permit to carry out those actions. For example, if landowners must obtain a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) to carry out an action on their land, the Corps must

consult with the Service under section 7 of the Act to evaluate the effects that the permitted activity may have on critical habitat. Even then, the designation may only have a substantial impact on the activity if it is likely to result in the destruction or adverse modification of the critical habitat. It is the responsibility of the Federal agency, not the private landowner, to initiate the consultation with the Service.

The Act prohibits Federal agencies from carrying out actions that would destroy or adversely modify critical habitat. A Federal action (e.g., row crop farming, urban construction) that is not likely to cause the destruction or adverse modification of *Cirsium loncholepis* habitat may not be materially affected by a critical habitat designation. Federal action agencies must evaluate the potential effects of each action on its own merits. If a Federal action would result in the destruction or adverse modification of *C. loncholepis* habitat, the Service would suggest reasonable and prudent alternatives to avoid the destruction or adverse modification of critical habitat.

The promulgation of a regulation does not take private property unless the regulation denies the property owners all economically beneficial or productive use of their land. Further, in accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we analyzed the potential takings implications of designating critical habitat for *Cirsium loncholepis* in a takings implications assessment (TIA), which is available on request. The conclusion in the TIA was that the possibility for take of private property due to designation of critical habitat for *Cirsium loncholepis* is remote.

Comment 24: One commenter stated that it is the Service's obligation under section 2(c) to ''seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act'' and section 7(a)(1) to conserve threatened and endangered species.

Our Response: Section 4(a)(3) of the Act requires that critical habitat be designated for listed species. This rule meets our obligations under section 4(a)(3), which will help us accomplish our obligations under sections 2(c) and 7(a)(1). The designation of critical habitat for *Cirsium loncholepis* will not conflict with or prevent us from carrying out our obligations under sections 2(c) and 7(a)(1).

Comment 25: One commenter stated that we should designate as critical habitat all habitat and lands proposed for designation pursuant to the Act and that we should issue no exemptions or exclusions.

Our Response: We proposed to designate 38,447 ac (15,559 ha) as critical habitat in the proposed revised designation of critical habitat for *Cirsium loncholepis* (73 FR 45806). Of that total, we determined in this final revised designation that 37,810 ac (15,300 ha) meet the definition of critical habitat and are essential to the conservation of the species. We determined that some areas (approximately 639 ac (259 ha) within Unit 1) with a long-standing history of heavy OHV use did not contain the PCEs in the appropriate quantity and spatial arrangement and therefore were not essential to the conservation of the species and did not fit the definition of critical habitat (see our response to Comments 18 and 20). We are excluding 13,705 ac (5,546 ha) of Department of Defense (DOD) lands within the boundaries of Vandenberg Air Force Base (VAFB) under section 4(b)(2) of the Act based on potential impacts to national security. Because the Service is not an expert in military readiness, we defer to the expertise of the DOD in identifying specific credible military readiness or national security impacts. See the section entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) below for a more indepth discussion of this topic.

Comment 26: Two commenters submitted duplicate requests for us to revise the boundaries of Unit 3 according to those recommended in a separate comment letter. The commenters stated that we should exclude upland, developed, and agriculture areas in Unit 3 because these areas provide poor habitat for potential *Cirsium loncholepis* plants and that this exclusion ''...should not cause significant impacts to the thistle's recovery.'' The commenters stated that the proposed revisions to the boundaries of Unit 3 were based only on PCEs 1 and 2 and acknowledged that ''the Cañada de las Flores Unit (Unit 3) may potentially provide a key linkage between known [*C. loncholepis*] populations.''

Our Response: We are directed by the Act to determine what areas are essential for the conservation of a species, not what areas are essential, but ''...should not cause significant impacts to the [species'] recovery''. We state in the text that developed areas and agricultural fields that do not contain PCEs are not critical habitat. Information from J. Sainz (Elvin 2007a) contradicts some information presented in this comment; specifically, while she did state that *Cirsium loncholepis* primarily occurred at three places at Cañada de las Flores, she also stated that it historically occurred sporadically throughout the lowlands there, and not just at the three specific locations where it most commonly was found. Information received from peer reviewers indicate that a much larger area at Cañada de las Flores contains suitable habitat that at present, due to drought and overgrazing, appears less suitable (Hunt 2008). Hunt states that the entire valley floor in Cañada de las Flores floods in heavy rain years. We determined that the 740 ac (299 ha) at Cañada de las Flores meet the definition of critical habitat for *C. loncholepis* (see the unit description for Unit 3 in the Final Critical Habitat section below).

Comment 27: One comment letter stated that DOD lands at VAFB must NOT [emphasis included in comment] be exempt from the requirements of the Act to protect *Cirsium loncholepis* in the 17,705 ac of wetland and dune areas on the ''people's property'' on VAFB. Another commenter stated that they believe that it is not a national security issue for VAFB to be exempted from ''protecting the people's *Cirsium loncholepis* and its habitat.''

Our Response: The DOD is not exempt from the Endangered Species Act, or from the designation of critical habitat. We determined that 14,151 ac (5,727 ha) of DOD lands meet the definition of critical habitat within the boundaries of VAFB. While DOD lands may not be designated as critical habitat if they are subject to an integrated natural resources management plan (INRMP) that is recognized by the Secretary to provide a benefit to the species (per section 4(a)(3)(B) of the Act), such a plan does not exist for DOD lands at VAFB. We are excluding 13,705 ac (5,546 ha) of DOD lands within the boundaries of VAFB under section 4(b)(2) of the Act based on potential impacts to national security. Please see our response to Comment 25 and the section entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) below for a more indepth discussion of this topic.

Federal Agency Comments

Comment 28: The DOD requested that we exclude its lands at VAFB from our final revised critical habitat designation based on an exemption under section 4(a)(3)(B) of the Act for military installations with an INRMP. Section 4 of the Act was amended through the National Defense Authorization Act for 2004 (Public Law 108-136). Section

4(a)(3)(B) of the Act states the Secretary shall not designate as critical habitat any lands controlled by DOD that are subject to an INRMP, if the Secretary determines that such a plan provides a benefit to the species for which critical habitat is proposed.

Our Response: The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. Because the INRMP being prepared by DOD for VAFB is in draft form and will not be completed by the time this final revised critical habitat designation publishes in the **Federal Register**, we cannot determine if the INRMP provides a benefit to *Cirsium loncholepis.* Therefore, we cannot exempt DOD lands at VAFB on the basis of section 4(a)(3)(B) of the Act.

Comment 29: The DOD further requested that we exclude its lands at VAFB based on section 4(b)(2) of the Act. They specifically discussed that national security would be impacted because a critical habitat designation would limit the amount of natural infrastructure (e.g., land, water, and air resources) that are needed to support military operations and training. DOD also stated that they believe the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these lands would not result in extinction of *Cirsium loncholepis*. They included in the comment their own analysis of how they reached that conclusion, as follows: for potential benefits of designating critical habitat, they do not foresee any benefits, but instead stated that it would be more beneficial to designate critical habitat on lands where no proven, long-term conservation and management regime exists and where other Federal protections do not apply. They stated that designation of critical habitat will provide no additional benefit to *C. loncholepis* because:

(1) They are developing a draft conservation agreement for *Cirsium loncholepis* (also referred to by the DOD as the Draft Endangered Species Management Plan for La Graciosa Thistle (ESMP)) in cooperation with the Service that will ensure conservation measures are implemented;

(2) Other existing regulations, such as the National Environmental Policy Act (NEPA) and the Environmental Impact Analysis Process (part of U.S. Air Force Policy codified in 32 CFR 989), assure that appropriate conservation measures are undertaken for listed species and their habitat; and

(3) Limited resources could be better spent on implementation of management activities rather than additional unnecessary consultations.

Our Response: Section 4(b)(2) of the Act directs the Secretary to consider the impacts of designating such areas as critical habitat and provides the Secretary with discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion unless the exclusion will result in the extinction of the species. We believe that our criteria for proposing critical habitat captured all areas that meet the definition of critical habitat under section 3(5)(A) of the Act. Therefore, we will focus our response to this comment on our exclusion of lands under section 4(b)(2) of the Act that we determined met the definition of critical habitat under section 3(5)(A) of the Act.

After determining the areas that meet the definition of critical habitat under section 3(5)(A) of the Act, we took into consideration the economic impact, any potential impacts on national security, and other relevant impacts of specifying any particular area as critical habitat for *Cirsium loncholepis*. In this final revised designation, we recognize that designating critical habitat on lands within VAFB may have an impact on national security. These impacts are described in detail in the section entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) below. Based on these relevant impacts, we evaluated the benefits of designating areas as critical habitat against the benefits of excluding these areas from the critical habitat designation. Upon weighing the specific benefits of inclusion against specific benefits of exclusion, we determined that the benefits of excluding all lands owned by DOD at VAFB (13,705 ac (5,546 ha) of the 14,151 ac (5,727 ha) within the boundaries of VAFB) outweigh the benefits of including these areas in the final critical habitat designation. Further, we determined that the exclusion of these areas will not result in the extinction of *C. loncholepis*. See the Application of Section 4(b)(2) of the Act and Exclusions under Section 4(b)(2) of the Act sections of this final rule for a detailed discussion of the benefits of excluding lands important to national security versus the benefits of including these areas in a critical habitat designation.

We respond to the particular points that DOD raised as follows. With respect to their comment that designation of critical habitat is more beneficial on lands where no proven, long-term conservation and management regime exists and where other Federal protections do not apply, our response is that we are not charged with designating critical habitat where it would be ''most beneficial'' to the species, but rather on lands that meet the definition of critical habitat. Moreover, the comment implies that protections will be conferred by critical habitat designation in the absence of other federal protections. However, critical habitat in and of itself does not confer protection on lands that are designated, nor does it affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. These impacts are described in detail in the section entitled Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) near the end of this rule.

With respect to DOD's comment that there is a lack of benefit from designating critical habitat because they are developing an ESMP in cooperation with the Service that will ensure conservation measures are implemented, please see our response to Comment 30 below.

With respect to DOD's comment that other existing regulations, such as NEPA and the Environmental Impact Analysis Process, assure that appropriate conservation measures are undertaken for listed species and their habitat, our response is that we agree that other regulations and policies have the potential to contribute to the conservation of the species. However, in the absence of designated critical habitat in these particular areas, the existing regulations may not take into consideration the importance of these areas to the conservation of *Cirsium loncholepis.*

Comment 30: In a related comment, the DOD requested that we exclude its lands at VAFB under section 3(5)(A) of

the Act based on an ESMP that they have developed for *Cirsium loncholepis.*

Our Response: Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species, at the time it is listed, 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. As noted in our response to Comment 21, the Service no longer considers that areas covered by an approved management plan for the species of concern do not meet the definition of critical habitat, and thus we do not exempt lands from the designation on this basis. However, if an area has an adequate conservation management plan that covers the species and provides for management sufficient to conserve the species, we may consider the area for exclusion from the critical habitat designation under section 4(b)(2) of the Act.

We are currently working with VAFB on the development of a management plan for *Cirsium loncholepis* that will meet the conditions described above. The ESMP for *C. loncholepis* at VAFB proposes that the base comply with Federal and State mandates for threatened and endangered species; conduct surveys and inventories for the presence of federally listed species; and protect and enhance existing populations and habitats of threatened and endangered species (assess status, develop long-term plans, and conduct actions for recovery). This plan is still in its formative stages with little detail. In its current state, it does not explicitly provide a conservation benefit to the species, reasonable assurances that the management plan will be implemented or reasonable assurances that the conservation effort will be effective. The plan thus does not meet our criteria for exclusion from the designation under section 4(b)(2) of the Act. Therefore, we are not excluding VAFB lands from the final critical habitat designation as requested under section 3(5)(A) of the Act or under section 4(b)(2) of the Act based on an ESMP for *C. loncholepis*. However, please see the section entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) below for a detailed discussion of our exclusion of VAFB lands for reasons of national security under section 4(b)(2) of the Act.

Comment 31: The DOD made several comments regarding the likelihood of whether *Cirsium loncholepis* currently occurs or historically occurred on VAFB. They provided a recent document from Mulroy (in Linn 2008, unpaginated) indicating that collections made from San Antonio Terrace and cited in a survey report (Henningson *et al.* 1980, pp. 19-119) were misidentified.

Our Response: We appreciate receiving the additional report clarifying that the specimens of *Cirsium* from Mulroy were misidentified. However, other reports (Keil and Holland 1998, pp. 83-84; Oyler, Holland, and Keil 1995, 92 pp.) state that *Cirsium loncholepis* may have occurred near the mouth of San Antonio Creek beside San Antonio Terrace. While we may never know with absolute certainty whether *C. loncholepis* historically occurred on San Antonio Terrace, we identified these lands as meeting the definition of critical habitat because they contain the PCEs in the quantity and spatial arrangement essential for the conservation of the species.

Comment 32: The DOD opined that the type locality for *C. loncholepis*, indicated as ''La Graciosa'' on the herbarium sheet, was more likely near Orcutt than the mouth of the San Antonio River.

Our Response: At the time we prepared the previous critical habitat proposal in 2004, the best scientific information available at the time indicated that the type locality of ''La Graciosa'' was near Orcutt. However, in preparing for this revised final critical habitat designation, we were able to obtain a copy of Alice Eastwood's field notes (Eastwood 1906, unpaginated), and we also received additional information from Dieter Wilken at the Santa Barbara Botanic Garden (Wilken 2009a, unpaginated). Based on Alice Eastwood's description of the area and route taken (''July 2, '06, Road to Casmalia and sand dunes''), the associated species that she collected that day, and the additional information from Wilken, we believe that the type location for *Cirsium loncholepis* could be anywhere within a 10-mi (16-km) area centered around Casmalia that includes San Antonio Creek, the sand dunes of San Antonio Terrace to the southwest of Casmalia, the historical Lake Guadalupe, Orcutt Creek, and even the mouth of the Santa Maria River. The specimen was collected near Casmalia and sand dunes. We acknowledge that information regarding this collection and the specific location of ''La Graciosa'' are not sufficient to be conclusive, and that some of this information indicates that the type location could be near Orcutt or the other areas mentioned.

Comment 33: The DOD commented that the high floodwaters along the Santa Ynez River in 1969 likely impacted and possibly extirpated the population of *Cirsium loncholepis* that occurred there. During this flood event, the river reached a stage of 7.4 m (24.2 ft) above normal flow height and reached a maximum discharge of 80,000 cubic ft/second (sec) (2,264 cubic m/sec).

Our Response: Although we did not specifically mention the Santa Ynez River flood of 1969 in the proposed revised critical habitat designation, we did discuss floodplain dynamics, how we would expect a species such as *Cirsium loncholepis* to ''wander'' within an area of suitable habitat (e.g., a floodplain) over time, and how this was an important aspect in maintaining the dynamic ecosystem that this species requires. We have added reference to the 1969 flood to the Primary Constituent Elements section and in the Santa Ynez River Unit description in the Critical Habitat section of this rule.

Comment 34: The DOD commented that VAFB operations do not constitute a long-term threat of destruction or adverse modification to suitable habitat.

Our Response: When Federal agencies consult with the Service under section 7 of the Act, the Service makes the determination of whether activities will destroy or adversely modify critical habitat during the consultation process, after we have received all of the pertinent information regarding the subject activities. We analyze each project description and all of the associated conditions regarding a proposed activity before we can determine whether it might destroy or adversely modify critical habitat; to do so in advance of completing the necessary analysis of a specific action would be predecisional. Consequently, we cannot at this time determine the validity of the DOD's comment. However, we are excluding DOD lands at VAFB under section 4(b)(2) of the Act based on potential impacts to national security. Therefore, the question of whether DOD operations at VAFB might adversely modify critical habitat is moot.

Comment 35: The DOD commented that VAFB consists of extensive tracts of undeveloped and encroachment-free property, and that these extensive tracts of undeveloped and encroachment-free property are essential for launch safety buffers and completion of the DOD mission at VAFB. They added that critical habitat could potentially negatively impact their mission capability and possibly introduce unnecessary constraints that degrade mission readiness by limiting DOD's flexibility to implement land use changes in support of the mission-related projects and programs at VAFB.

These negative impacts could include: (a) Closure of areas needed for development, (b) a reduction in the availability of operational land requirements for present and future needs, and (c) project delays resulting from unnecessary and possibly redundant administrative requirements.

Our Response: We are excluding 13,705 ac (5,546 ha) of DOD lands within the boundaries of VAFB under section 4(b)(2) of the Act based on potential impacts to national security. Because the Service is not an expert in military readiness, we have deferred to DOD's expertise in identifying specific credible military readiness and national security impacts. Please see the section entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) below for a more indepth discussion of this topic.

Comments Related to the Draft Economic Analysis

Comment 36: Proposed critical habitat does not consider the economic impacts of this rule on operations and recreational opportunities in ODSVRA.

Our Response: The Service develops an analysis of economic impacts of the proposed critical habitat designation based on information presented in the proposed rule. Consequently, the draft economic analysis is made available after publication of the proposed critical habitat rule. For *Cirsium loncholepis*, we issued the Draft Economic Analysis (DEA) and made it available to the public for review and comment on March 10, 2009 (74 FR 10211). We analyzed the economic impacts to operations and recreational opportunities in ODSVRA in the Draft and subsequent Final Economic Analysis (FEA) and considered these impacts in the development of this final revised critical habitat designation.

Comment 37: Critical habitat could result in significant delays to crucial visitor and management efforts for ODSVRA because ''...securing Federal section 7 consultations could jeopardize projects, jeopardize project funding, and result in significant loss of recreational opportunities in Oceano Dunes SVRA.''

Our Response: The Service is aware of and has considered the operations and visitor and management efforts for ODSVRA. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation does not force a landowner to manage their land to the benefit of a species. Furthermore, proposed projects or actions occurring in critical habitat that do not involve a Federal nexus are not subject to the section 7 prohibition against destruction or adverse modification of critical habitat and, therefore, no consultation is required for those projects to occur. Where the consultation requirements of section 7(a)(2) do apply, an analysis would only result in a finding of destruction or adverse modification if the project was expected to impact the capability of the critical habitat unit as a whole to perform its conservation function for the species. Projects may adversely impact the physical and biological features essential to the conservation of a species within a critical habitat unit without impairing the unit's conservation role and function for the species. We have not consulted on any projects within designated critical habitat for *Cirsium loncholepis* where we determined that project implementation would destroy or otherwise adversely modify critical habitat such that the designated unit could no longer properly function and support the essential features for which it was designated. If a Federal nexus does exist and the Service makes a finding of destruction or adverse modification of critical habitat, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat. Therefore, we do not believe that designation of critical habitat within ODSVRA would result in a ''significant loss of recreational opportunities'' in ODSVRA.

Comment 38: The proposed revised critical habitat rule for *Cirsium loncholepis* is not accompanied by an economic analysis. The Service should withdraw this proposed rule and publish a new one after completing and submitting the economic analysis for public comment.

Our Response: The proposed rule did not contain an economic analysis. As is our usual practice because of the urgency of court orders, the proposed designation noted that we would announce the availability of the draft economic analysis at a later date and would at that time seek public review and comment on the draft economic analysis. We announced the availability of the draft economic analysis and reopened the comment period on the proposed revised critical habitat designation on March 10, 2009 (74 FR 10211). The comment period closed on April 9, 2009.

Comment 39: The Service must perform a parcel by parcel [economic] analysis of all areas it proposes to include within critical habitat.

Our Response: The economic analysis presents costs at the unit level, and where possible, by parcel. Calculating economic impacts at the parcel level is often not possible due to lack of readily available information on economic activities likely to be undertaken at those locations in the foreseeable future. If it is clear that a particular parcel may incur costs associated with the critical habitat designation, such as costs to a landowner within Unit 3, these have been included in the analysis.

Comment 40: One commenter stated that the proposed rule fails to analyze economic impacts according to the Regulatory Flexibility Act.

Our Response: We made available a DEA on March 10, 2009 (74 FR 10211), that addressed the economic impacts to several sectors, including agriculture and ranching, and businesses that support off-highway vehicle recreation. The DEA concluded that less than one agricultural entity per year is anticipated to be affected by the critical habitat designation. The DEA indicated that 85 percent of the businesses potentially providing services to OHV users are small, but that the total loss in spending affected by the designation is expected to be less than 0.5 percent. This determination was finalized in the final economic analysis (FEA) dated July 27, 2009. Therefore, we did analyze economic impacts in accordance with the Regulatory Flexibility Act.

Comment 41: One commenter stated that the economic analysis must analyze and calculate all of the benefits of designating critical habitat; specifically, there are many additional benefits of critical habitat designation beyond just the conservation of habitat for the listed species. Critical habitat contributes to the survival and recovery of listed species, and the Service must analyze and calculate this contribution and that these values should be included in the economic analysis.

Our Response: In the context of a critical habitat designation, the primary purpose of the rulemaking (i.e., the direct benefit) is to designate areas that contain the features that are essential to the conservation of listed species.

The designation of critical habitat may result in two distinct categories of benefits to society: (1) Use; and (2) non-use benefits. Use benefits are simply the social benefits that accrue from the physical use of a resource. Visiting critical habitat to see threatened or endangered species in their natural habitat would be a primary example. Non-use benefits, in contrast, represent welfare gains from ''just knowing'' that a particular listed species' natural habitat is being specially managed for

the survival and recovery of that species. Both use and non-use benefits may occur unaccompanied by any market transactions.

A primary reason for conducting this analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific and commercial data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Economic impacts can be both positive and negative and, by definition, are observable through market transactions.

Where data are available, the analysis attempts to recognize and measure the net economic impact (i.e., the increased regulatory burden less any discernable offsetting market gains) of species conservation efforts imposed on regulated entities and the regional economy.

Under Executive Order 12866, the Office of Management and Budget (OMB) directs Federal agencies to provide an assessment of both the social costs and benefits of proposed regulatory actions. OMB's Circular A-4 distinguishes two types of economic benefits: direct benefits and ancillary benefits. Ancillary benefits are defined as favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking. In the context of critical habitat, the primary purpose of the rulemaking (i.e., the direct benefit) is the potential to enhance conservation of the species. The published economics literature has documented that social welfare benefits can result from the conservation and recovery of endangered and threatened species. In its guidance for implementing Executive Order 12866, OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.

We have accordingly considered, in evaluating the benefits of excluding versus including specific areas, the biological benefits that may occur to a species from designation (see below, Exclusions Under Section 4(b)(2) of the Act), but these biological benefits are not addressed in the economic analysis (in terms of economic impacts). A chapter on benefits (Chapter 10) has been added to the FEA to highlight potential, qualitative benefits of the critical habitat designation for *Cirsium loncholepis*.

Comment 42: Several commenters state that reducing OHV use in ODSVRA may result in benefits to non-OHV beach recreators and ecotourists, resulting in regional economic benefits. Several additional commenters express similar concerns about benefits to non-OHV recreators and the local economy. One commenter suggested that the OHV community causes a loss in revenue to the Pismo area and this loss was not captured in the DEA.

Our Response: This critical habitat designation will not in and of itself result in closure of any OHV areas. The CDPR may decide to close portions of the riding area to OHV use of their own accord. Paragraph 161 of the DEA included a qualitative discussion of welfare gains associated with such potential closure of portions of the riding area to OHV use by the CDPR. Paragraph 161 states that ''non-OHV recreators (e.g., beach-going recreators, hikers, wildlife enthusiasts) may experience benefits when this area is closed to OHV use.'' In addition, a chapter on benefits (Chapter 10) has been added to the FEA to highlight potential categories of benefits resulting from the designation. This chapter includes discussion of potential benefits to non-OHV recreators at ODSVRA and ecotourists, and associated regional economic benefits.

Comment 43: Several commenters state that costs associated with OHV use in the Oceano Dunes area were not considered in the DEA, and that the following should have been considered in the DEA: air pollution caused by ODSVRA is estimated to cost millions of dollars in health care, missed work and school, and premature death; the Central Valley paid $2 billion in health care due to particulate matter caused by OHV's breaking the dune crust and releasing larger amounts of particulate matter into the air. Further, additional police and safety personnel, infrastructure, and road repairs are needed because of the OHV community and traffic. In addition, noise and danger associated with OHV use may discourage people from visiting Oceano Dunes resulting in a loss to the regional economy.

Our Response: Costs associated with OHV use would be reduced if OHV visitation declines due to the critical habitat designation. Thus, a reduction in these costs represents a benefit associated with the designation. Chapter 10 in the FEA includes a discussion of these potential benefits.

Comment 44: Two commenters state that OHV users do not patronize Oceano Dunes area shops and other local businesses and therefore do not benefit the regional economy. They state that traffic counts from OHV users are deceptive and that the high rate of failed businesses in the area provides evidence of this lack of patronage.

Our Response: The DEA estimates of changes in regional spending rely on the Cal Poly study, which surveyed OHV users about their spending habits while visiting ODSVRA. The survey questionnaire asked respondents explicitly to provide the amount of money spent in the Five Cities Area (including Pismo Beach, Arroyo Grande, Oceano, Grover Beach, and Shell Beach).

Comment 45: One commenter stated the DEA incorrectly assumes that an environmental impact report (EIR) will [already] be required for any vineyard project proposed within Unit 3 due to the presence of the California tiger salamander, because it may one day be delisted, rendering the need for an EIR based on the California tiger salamander moot. Also, it is not certain that an EIR would be required to convert existing farmed areas to other agricultural uses. Therefore, the DEA should have assessed financial impacts of any regulatory documents required because of *Cirsium loncholepis* critical habitat alone.

Our Response: We believe that the DEA made an accurate assessment of this situation because we consider all areas within 1.2 km of known, California tiger salamander breeding ponds as occupied. All of Unit 3 falls within the 1.2 km radius of known breeding ponds for California tiger salamander. The analysis in the DEA assumed the legal status of this species would remain unchanged in the future and therefore assumed that costs associated with preparing an EIR would be incurred in the baseline. A caveat was added in the FEA stating that if the California tiger salamander is delisted in the future, costs associated with preparing an EIR may be considered incremental instead of baseline.

Comment 46: Three commenters stated that the DEA is flawed because it should have used and considered ''an independent economic study such as the one by Dean Runyan on tourism'' instead of ''Economic Impact of Oceano Dunes SVRA Visitors'' study by the California Polytechnic State University (CalPoly), which was funded by the OHV community, as the basis for the

$40 million upper-bound incremental impact estimate in the analysis and that the latter study ''...incorrectly relied heavily on gasoline sales.''

Our Response: The DEA high-end estimate of incremental costs of $39.6 million did not rely on the CalPoly study. The estimate included the cost of recreation-related conservation activities as well as costs associated with section 7 consultations in Guadalupe-Nipomo National Wildlife Refuge and section 7 consultations for development projects. The majority of the recreation-related economic impacts are associated with the lost welfare experienced by OHV users who may forego trips as a result of potential restrictions to portions of the riding area. This loss was estimated by multiplying the number of lost trips, based on the visitor attendance data provided by the California Department of Parks and Recreation, the size of potential closures, and the consumer surplus value of a trip. The consumer surplus value used is based on the average value from a study by Englin *et al.* (2003) and Jakus (2003) (see paragraphs 126 through 137 in the DEA for an explanation of the methods used).

The CalPoly study is used to provide the Service with information regarding the potential distributional effect of the rule. It is intended to provide information about the potential reduction in economic activity in San Luis Obispo County associated with a potential reduction in OHV trips.

The FEA notes that it is possible the potential magnitude of lost economic activity in the region may be overstated. As described in paragraphs 144, 174 through 176, and Exhibit 5-7 of the FEA, it is unclear whether the authors of the CalPoly study multiplied visitation data, which is presumed to be daily attendance, by per trip or per day expenditure values. We attempted to contact the study authors for clarification; however, the authors were unavailable. We continue to report the data presented by the authors because it represents the only recent survey of spending patterns that specifically targets OHV users at the OSDVRA.

Dean Runyan Associates conducts an annual study on ''California Travel Impacts by County.'' This study was considered, but does not focus specifically on, ODSVRA users. Furthermore, the study does not provide the detail necessary to enable a comparison of the results of Dean Runyan's work to the result of the study by CalPoly.

Comment 47: One commenter stated that the DEA did not adequately quantify costs associated with delays due to local permitting requirements in direct response to the critical habitat designation.

Our Response: The FEA quantifies these costs where the necessary data were available (see, for example, sections 6.3.2 and 7.4 of the FEA).

Comment 48: One commenter stated that the DEA did not address future and potential oil and gas activities or agriculture and ranching activities in Unit 3 or attempt to quantify the impacts of the designation on these activities.

Our Response: A discussion of future and potential oil and gas activities in Unit 3 has been added to the Oil and Gas Operations Chapter of the FEA. The primary landowner in that unit provided a schedule suggesting that his property can support up to 39 active wells and including the potential value of this resource. This information is reported in paragraph 236 of the FEA. However, at this time, he has not reactivated the retired wells, nor could he specify a date by which he would initiate oil and gas production activity.

The cost of project delay for one of the vineyard conversion projects in Unit 3 has been added to the final economic analysis (see paragraphs 219 through 221 and Exhibit 7-4). Detailed information was not provided for the other vineyard conversion project and thus the delay costs could not be quantified. Ranching in Unit 3 is not anticipated to be affected by the designation. (See response to Comment 45 for additional discussion of the potential for incremental costs associated with the vineyard conversion project in this unit where information was provided by the landowner.)

Comment 49: One commenter states that previous economic analyses have overestimated the costs of the designation of critical habitat by ascribing coextensive costs to their designation. The commenter goes on to state that the Service must separate out all costs in the economic analysis that are attributable to listing alone, required by biological opinions, habitat conservation plans, State laws, or other regulatory measures, and that the costs associated with critical habitat must be considered alone.

Our Response: This economic analysis considers the costs associated with critical habitat separate from those likely to occur under the baseline conditions, to the extent possible. Specifically, the economic analysis employs ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already accorded *Cirsium loncholepis* (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for *C. loncholepis*. These impacts are summarized in the Executive Summary under ''Summary of Incremental Impacts'' and in Exhibit ES-4.

Comment 50: One commenter states that the DEA fails to consider the critical habitat's potential role in leading to the closure of the entire ODSVRA to OHV riding and vehicular beach camping. The commenter states that if the county of San Luis Obispo retains ownership of La Grande Tract because the California Department of Parks and Recreation decides not to purchase the land in response to restrictions on OHV use resulting from the critical habitat designation, the county will likely follow its general plan provisions and ban OHV use. Closure of La Grande Tract to OHV use would leave only a narrow strip of land along the beach to provide access to the remainder of ODSVRA. Expansion of the closure of beach riding or vehicular access during all or part of the year to protect species such as the western snowy plover would effectively block access to the ODSVRA, requiring it to shut down to OHV riding.

Our Response: We believe that the designation of critical habitat will not require closure of any additional OHV riding areas. We believe that the designation will not affect any area used by OHVs. The 5 percent figure included in the economic analysis is a high-end estimate of economic impacts based on possible voluntary actions that may be taken by CDPR in response to the designation. The possible voluntary actions could include: (1) CDPR decides to manage the 75 acres for *Cirsium loncholepis* and close the area to OHV use, or (2) in completion of their HCP, CDPR decides to close these areas to manage them for *Cirsium loncholepis*. Speculation regarding the outcome of current or future litigation concerning the La Grande tract is beyond the scope of the economic analysis. As a result, complete loss of OHV recreational opportunities is not considered to be a reasonably foreseeable outcome and therefore is not quantified in the report. A qualitative discussion of the policy issues surrounding the future use of La Grande Tract has been added to the FEA

(see paragraphs 125 through 127 of the FEA).

Comment 51: One commenter states that the DEA failed to consider what impact designating critical habitat for *Cirsium loncholepis* may have on the pending litigation concerning ODSVRA. Pending litigation includes a suit brought by Friends of Oceano Dunes against the county challenging the jurisdiction of the county over land use at ODSVRA and a suit brought by the Sierra Club seeking to compel CDPR to stop OHV riding on La Grande Tract.

Our Response: A qualitative discussion of the policy issues surrounding the future use of La Grande Tract has been added to the FEA (see paragraphs 122 through 127 of the FEA). Speculation regarding the outcome of current or future litigation concerning the La Grande tract is beyond the scope of the FEA.

Comment 52: One commenter states that the DEA failed to adequately support its assumption that ODSVRA has only 1.3 million annual visitors. The commenter stated that annual visitation is 2.1 million, not 1.3 million, and that the DEA failed to obtain data from the CDPR on visitation and user patterns.

Our Response: Exhibit 5-3 in the DEA presented monthly ODSVRA visitation data since 2002 provided by the CDPR. Total visitation to the park is expected to remain around two million for the next 20 years, but the DEA only considers impacts to visitors who are OHV users. The DEA assumes that 65 percent of visitors are OHV users, or 1.3 million OHV user visitors. This assumption is based on data provided by and personal communication with the CDPR.

Comment 53: One commenter states that the DEA failed to quantify the cost of ''internal'' section 7 consultations within section 10 habitat conservation plans.

Our Response: The DEA quantifies the cost associated with internal consultation under section 7 of the Act during section 10 deliberations with the CDPR for their incidental take permit. These costs are included in the baseline and the additional costs associated with addressing the adverse modification standard are included as incremental to the critical habitat designation. See sections 5.5.1 and 5.5.2 in the DEA for more detail.

Comment 54: One commenter states that the DEA failed to adequately support its assumption that 5 percent of the riding area at ODSVRA would be closed due to the critical habitat designation for *Cirsium loncholepis*.

Our Response: We believe that the designation of critical habitat will not require closure of any additional OHV riding areas. We believe that the designation will not affect any area used by OHVs. The 5 percent figure included in the economic analysis is a high-end estimate of economic impacts based on possible voluntary actions that may be taken by CDPR in response to the designation. The possible voluntary actions could include: (1) CDPR decides to manage the 75 acres for *Cirsium loncholepis* and close the area to OHV use, or (2) in completion of their HCP, CDPR decides to close these areas to manage them for *C. loncholepis*.

Summary of Changes From the Revised Proposed Rule and Previous Critical Habitat Designation

TABLE 1—CHANGES BETWEEN THE MARCH 17, 2004, CRITICAL HABITAT DESIGNATION, THE AUGUST 6, 2008, PROPOSED DESIGNATION, AND THIS FINAL REVISED DESIGNATION

Critical habitat unit in this final rule	County	2004 designation of critical habitat (69 FR 12553)	2008 proposed revision to the critical habitat designation (73 FR 45806)	2009 final revised critical habitat designation
1. Callender-Guadalupe Dunes	San Luis Obispo	Included as part of Unit 1 (Pismo-Orcutt): 38,262 ac (15,484 ha)	Included as Unit 1: 10,329 ac (4,180 ha)	Included as Unit 1: 9,690 ac (3,921 ha)
2. Santa Maria River-Orcutt Creek	San Luis Obispo and Santa Barbara	Included as part of Unit 1 (Pismo-Orcutt): 38,262 ac (15,484 ha)	Included as Unit 2: 13,227 ac (5,353 ha)	Included as Unit 2: 13,227 ac (5,353 ha)
3. Cañada de las Flores	Santa Barbara	Unit 2: 2,827 ac (1,144 ha)	Included as Unit 3: 740 ac (299 ha)	Included as Unit 3: 740 ac (299 ha)
4. San Antonio Creek	Santa Barbara	Not included	Included as Unit 4: 4,335 ac (1,754 ha)	Included as Unit 4: 185 ac (75 ha)
5. San Antonio Terrace	Santa Barbara	Not included	Included as Unit 5: 7,334 ac (2,968 ha)	Included as Unit 5: 52 ac (21 ha)
6. Santa Ynez River	Santa Barbara	Not included	Included as Unit 6: 2,482 ac (1,005 ha)	Included as Unit 6: 210 ac (85 ha)
Totals		**41,089 ac (16,628 ha)**	**38,447 ac (15,559 ha)**	**24,103 ac (9,754 ha)**

In preparing this final revised critical habitat designation for *Cirsium loncholepis*, we reviewed and considered comments from the public and peer reviewers on the proposed revised designation of critical habitat published on August 6, 2008 (73 FR 45806), and public comments on the draft economic analysis published on March 10, 2009 (74 FR 10211). As a result of all comments received on the revised proposed rule and the draft economic analysis, we made changes to our proposed revised designation, as follows:

(1) We revised the boundaries of critical habitat within the OHV area of the ODSVRA to only include polygons consisting of vegetated habitat patches. This resulted in a reduction of Unit 1 from 10,329 ac (4,180 ha) to 9,690 ac (3,921 ha), for a decrease of 639 ac (259 ha). The acreage change is reflected in Table 1.

(2) We excluded 4,151 ac (1,680 ha) of lands on VAFB that we had proposed in Unit 4 based on potential impacts to national security. We are designating approximately 185 ac (75 ha) of non-

DOD lands in Unit 4 as critical habitat. The acreage change is reflected in Table 1.

(3) We excluded 7,282 ac (2,947 ha) of lands on VAFB that we had proposed as Unit 5 based on potential impacts to national security. We are designating approximately 52 ac (21 ha) of non-DOD lands in Unit 5 as critical habitat. The acreage change is reflected in Table 1.

(4) We excluded 2,272 ac (919 ha) of lands on VAFB that we had proposed in Unit 6 based on potential impacts to national security. We are designating approximately 210 ac (85 ha) of non-DOD lands in Unit 6 as critical habitat. The acreage change is reflected in Table 1.

(5) We incorporated technical information provided by the peer reviewers.

With these noted exceptions, this final designation is unchanged from the proposed revised designation. The result of these changes has been the reduction of final revised critical habitat designated to 24,103 ac (9,754 ha); this represents a total reduction of 14,344 ac (5,804 ha) from what we proposed in 2008.

The areas identified in this revised critical habitat designation constitute a revision from the areas we designated as critical habitat for *Cirsium loncholepis* on March 17, 2004 (69 FR 12553). The main differences include the following:

(1) The 2004 critical habitat rule (69 FR 12553) consisted of 2 units comprising a total of 41,089 ac (16,628 ha). This revision includes 6 units comprising a total of 24,103 ac (9,754 ha). Three of the units in the revision are generally located in the same geographic locations as those from the previous designation. Unit 1 in the previous designation has been divided into two units, one consisting of the Callender-Guadalupe Dunes and one consisting of the Santa Maria River and Orcutt Creek. There has been an overall reduction of approximately 15,345 ac (6,210 ha) in these areas from the previous designation of critical habitat primarily due to the removal of large areas of agricultural lands that are used as row crops because these areas do not contain the physical and biological features that are essential to the conservation of this species, identified as the species' PCEs laid out in the appropriate quantity and spatial arrangement.

(2) The area in Unit 3 Cañada de las Flores (Unit 2 in the previous designation) has decreased from 2,827 ac (1,144 ha) to 740 ac (299 ha). Additionally, we now consider Unit 3 to be unoccupied because we do not have recent data that indicate *Cirsium loncholepis* still occurs in this unit. Plants were last reported here in 1987 and 1989 (see our response to Comment 6 above). While *C. loncholepis* may still be at Cañada de las Flores, we are considering it to be unoccupied for the purposes of this rule based on the continued lack of observation of *C. loncholepis* since 1987 (Thornton 2008, unpaginated).

(3) We included lands in three additional units of unoccupied habitat. Unit 4 contains 185 ac (75 ha) along San Antonio Creek, Unit 5 contains 52 ac (21 ha) through San Antonio Terrace, and Unit 6 contains 210 ac (85 ha) along the Santa Ynez River.

This represents a decrease of 16,986 ac (6,873 ha) from the previously designated critical habitat in 2004.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features that are essential to the conservation of the species, and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat,

our primary source of information is generally the information developed during the listing process for the species.

Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine are necessary for the recovery of the species, based on scientific data not now available to the Service. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

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. They are also subject to the regulatory protections afforded by section 9 of the Act and the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific and commercial information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the PCEs required for *Cirsium loncholepis* from its biological needs as described below, in the proposed revised designation of critical habitat published in the **Federal Register** on August 6, 2008 (73 FR 45806), and in the NOA published in the **Federal Register** on March 10, 2009 (74 FR 10211). Additional information can also be found in the previous final listing rule published on March 20, 2000 (65 FR 14888), and in the original final critical habitat rule published on March 17, 2004 (69 FR 12553).

Space for individual and population growth

Cirsium loncholepis generally grows in association with mesic areas on the margins of dune swales, dune lakes, marshes, estuaries, coastal meadows, seeps, springs, intermittent streams, creeks, and rivers (Elvin 2006, unpaginated, 2007a, unpaginated, 2007b, unpaginated; California Natural Diversity Database (CNDDB) 2007, unpaginated; CCH 2008, unpaginated). *Cirsium loncholepis* occurs in a series of dynamic systems of dunes and riparian floodplains. *Cirsium loncholepis* can appear and disappear from particular sites, appearing to ''move'' from place to place in areas with suitable habitat on a fairly regular basis (this has been observed several times over the past 50 or more years (Hendrickson 1990, pp. 1-25; Chesnut 1998a, unpaginated; CNDDB 2007, unpaginated; Kelch 2008, unpaginated)). New suitable sites are continuously created throughout the dynamic ecosystems where *C. loncholepis* grows over time (i.e., floods remove vegetation and create new sites; dunes move and suitable sites open up). The conservation of *C. loncholepis* depends not only on maintaining suitable sites for germination and growth as they exist at the present, but also on maintaining the dynamic nature of the habitat (the dune and riparian complexes) where it grows, which will ensure that suitable sites for germination and growth will develop in the future (Damschen 2008, unpaginated; Kelch 2008, unpaginated; McEachern 2008, unpaginated).

Nutritional and Physiological Requirements Including Soils, Communities, and Dispersal

Soils

Soils where *Cirsium loncholepis* are found are somewhat variable, but include a large component of sand. Coastal populations occur on dune sands, Oceano sands, Camarillo sandy loams, riverwash, and sandy alluvial soils at elevations of less than 100 ft (31 m) (Hendrickson 1990, pp. 1-25; CNDDB 2001, unpaginated, 2007, unpaginated). Occasionally, individuals have been found on dune slopes or ridges, rather than in the more typical dune swale habitat; more stable dunes have been shown to act as reservoirs of moisture, and these individuals may be tapping into this moisture (Thomas 2001, unpaginated). Plants at an inland population have been found on Camarillo sandy loam at an elevation of 600 ft (183 m) (CNDDB 2001, unpaginated).

Communities

The suitable sites adjacent to mesic areas that are important for *Cirsium loncholepis* generally occur within larger vegetation communities and associations. *Cirsium loncholepis* is most often associated with the following diverse vegetation communities: freshwater seeps and springs, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), riparian forest, intermittent streams, and other wetland communities, which are generally interspersed within larger associations of the following vegetation communities: central dune scrub, coastal dune, coastal scrub, chaparral, oak woodland (Hendrickson 1990, pp. 1-25; CNDDB 2007, unpaginated). *Cirsium loncholepis* is often growing in and amongst a mat of low-growing, herbaceous, wetland plants including *Juncus* spp. (rush), *Scirpus* spp. (tule), *Carex praegracilis* (sedge), *Distichlis spicata* (salt grass), *Cynodon dactylon* (Bermuda grass), *Trifolium wormskioldii* (clover), *Anemopsis californica* (yerba mansa), *Potentilla anserina* (silverweed), and *Lotus corniculatus* (birdfoot trefoil) (Reed 1988, pp. 15-51; Chesnut 1998b, pp. 1-40; Langford 2001, unpaginated; Elvin 2006, unpaginated, 2007b, unpaginated; CNDDB 2007, unpaginated). Other closely associated riparian plants include *Salix* spp. (willow), *Rubus* (blackberry), and *Baccharis douglasii* (Douglas' baccharis) (Reed 1988, pp. 15-51; Chesnut 1998b,

pp. 1-40; Elvin 2006, unpaginated, 2007a, unpaginated, 2007b, unpaginated; CNDDB 2007, unpaginated). Upland plants that occur adjacent to or nearby include *Toxicodendron diversilobum* (poison oak), *Baccharis pilularis* (coyote brush), *Solidago californica* (California goldenrod), *Isocoma menziesii* (coast goldenbush), and *Corethrogyne filaginifolia* (California aster) (Hendrickson 1990, pp. 1-25; Elvin 2006, unpaginated, 2007a, unpaginated, 2007b, unpaginated; CNDDB 2007, unpaginated). Plants at the most inland site for *C. loncholepis* have been found primarily around gently sloping hillside seeps within a grassland community, at the edge of willows around a seep bordering an oak woodland community (Hendrickson 1990, pp. 1-25, Elvin 2007a, unpaginated). *Cirsium loncholepis* does occasionally occur in non-mesic conditions such as on ridges or dune tops such as in the Guadalupe Dunes (Elvin 2006, unpaginated) or throughout meadows (temporally and spatially) on flat valley bottoms, which are rather dry compared to the mesic seeps in these area (Elvin 2007a, unpaginated).

Dispersal

Genetic material can move both within a population and between different populations. In plants this can be accomplished through the movement of pollen, seeds, plants, or plant parts to other plants or sites within the same population or to another population. For *Cirsium loncholepis*, the main agents for gene flow are pollen and seeds. Pollinators move pollen from one flower to another. Most pollinators move pollen within the same population, but it can be moved to another population if it is close enough and the pollinator is capable of moving the pollen across that distance. *Cirsium loncholepis* seeds are capable of being moved within the same population and to another population by animals, wind, and water.

Pollinators: *Cirsium loncholepis* is capable of both self-fertilization (pollination events on the same individual) and cross-fertilization (pollination events between two individuals). Other similar, riparian, monocarpic *Cirsium* species self- and cross-pollinate (Hamzé and Jolls 2000, pp. 141-153). *Cirsium loncholepis* flowers produce nectar and copious quantities of pollen and are visited by birds and a wide variety of insects (Keil 2008, unpaginated). *Cirsium loncholepis* and other *Cirsium* taxa with similar heads are pollinated by bees (i.e., solitary, mining, (families Andrenidae and Anthophoridae), mason (*Osmia* sp.), carpenter (*Xylocopa* sp.), and leaf cutter bees (family Megachilidae) and the introduced honeybee (*Apis mellifera*)), butterflies (order Lepidoptera), flies (order Diptera), beetles (order Coleoptera (e.g., darkling ground beetles (family Tenebrionidae))), black ants (family Formicidae), and hummingbirds (family Trochilidae) (Moldenke 1976, pp. 305-361; Krombein *et al.* 1979, Vol. 2, pp. 1751-2209; Keil 2001, unpaginated, 2008, unpaginated; Lea 2001, unpaginated). Specialist-feeding bees (solitary bees, which are known to visit *Cirsium* species (Krombein *et al.* 1979, Vol. 2 pp. 1751-2209)) commonly develop co-evolutionary relationships with particular host plants (Moldenke 1976, pp. 305-361). While we do not have comprehensive information on the home ranges and species fidelity of these pollinators, we do have some data. A number of the insects noted above that are known to visit *Cirsium* flowers (i.e., ants, some beetles, butterflies, flies, and many bee taxa) live, nest, and reproduce in upland habitats (e.g., coastal dune scrub, coastal scrub, chaparral, oak woodland, grassland) within the range of *C. loncholepis* (Moldenke 1976, pp. 305-361; Krombein *et al.* 1979, Vol. 2 pp. 1751-2209; Thorp *et al.* 1983, pp. 1-79; Hogue 1993, 446 pp.). Alternative pollen source plants may be necessary for the persistence of these insects when *C. loncholepis* is not in flower seasonally or annually because of poor environmental conditions.

The main dispersal vectors for *Cirsium loncholepis* pollen include ants, beetles, butterflies, flies, bees, and hummingbirds. Some of these visitors (e.g., bumble bees, hummingbirds) can fly large distances and are therefore capable of transferring pollen longer distances, from plants in one population to plants in another population. Studies to quantify the distance that bees will fly to pollinate their host plants are limited in number, but the few that exist show that some bees will routinely fly from 328 to 984 ft (100 to 500 m) to pollinate plants (Thorp and Leong 1995, pp. 3-7; Schulke and Waser 2001, pp. 239-245). In a study of experimental isolation and pollen dispersal of *Delphinium nuttallianum* (Nuttall's larkspur), Schulke and Waser (2001, pp. 239-245) report that adequate pollen loads were dispersed by bumblebees within control populations and in isolated experimental ''populations'' from 328 to 1,312 ft (100 m to 400 m) distant from the control populations. One of the several pollinator taxa effective at 1,312 ft (400 m) was *Bombus* (bumblebee), which has also been documented to visit *Cirsium* (Ascher 2006, unpaginated). Studies by Steffan-Dewenter and Tscharntke (2000, pp. 288-296) demonstrated that it is possible for bees to fly as far as 3,280 ft (1,000 m) to pollinate flowers, and at least one study suggests that bumblebees may forage many kilometers from a colony (Sugden 1985, pp. 299-312). Hummingbirds can fly long distances while foraging for nectar or food or migrating. Using area rather than distance, an Anna's hummingbird (*Calypte anna*), for example, will hold a core territory of about 0.25 ac (0.1 ha) and a ''buffer zone'' of variable size, but usually 10-15 ac (4-6 ha) (Russell 1996, pp. 1-13). Hummingbirds are not restricted to these territories, but may venture greater distances crossing through neighboring territories to feed. Additionally, because extant populations of *C. loncholepis* are located within the Pacific flyway for migratory birds, while migrating, hummingbirds could forage in one population one day, and in another population later that day or the next day, thereafter, until either reaching their breeding or wintering grounds, or traveling beyond the range of *C. loncholepis*.

Seed Dispersal Vectors: According to Craddock and Huenneke (1997, pp. 215-219), *Cirsium* seeds are usually wind-dispersed, but birds and small mammals also disperse *Cirsium* seeds (Bent 1940, pp. 332-352, 1968, pp. 447-466; Burton and Black 1978, pp. 383-390). According to Keil and Turner (1993, pp. 232-239), wind is a likely dispersal vector for *C. loncholepis* seeds based on the architecture of their achenes, which are topped by an umbrella of long awns that are ideal for wind dispersal. The distribution of plants within a population (often an elongated pattern) is consistent with seed dispersal caused by the prevailing coastal winds (Lea 2002, pp. 1-84; Teed 2003, pp. 1-58). Additional dispersal vectors for *C. loncholepis* include small mammals and birds. Several small mammals that feed on seed of *Cirsium* species and move them among their seed caches live in the range of *C. loncholepis*. These include such species as kangaroo rats (*Dipodomys* spp.), pocket gophers (*Thomomys bottae*), California ground squirrels (*Spermophilus beecheyi*), and pocket mice (*Perognathus* spp.) (Burton and Black 1978, pp. 383-390; Blecha *et al.* 2007, pp. 1-354). Some small mammals, such as mice, use *Cirsium* tufts or down (the achene and pappus) as nest material (Root 2008, unpaginated). Various mammals such as mule deer (*Odocoileus hemionus*) and

cattle occur in the Callender-Guadalupe Dunes and have been documented grazing on thistle there (Nellis and Ross 1969, pp. 191-195; Theo *et al.* 2000, pp. 73-80; Blecha *et al.* 2007, pp. 1-354; Elvin 2007b, unpaginated). Some bird species, such as American Goldfinch (*Carduelis tristis*) and hummingbirds, some of which live within the range of *C. loncholepis*, use its tufts (or down) for nest construction (Weydemeyer 1923, pp. 117-118; Bent 1940, pp. 332-352, 1968, pp. 447-466; Blecha *et al.* 2007, pp. 1-354).

Water has been shown to be an important dispersal vector for seeds in another thistle, *C. vinaceum*, which also occurs in spring and streamside habitats (Craddock and Huenneke 1997, pp. 215-219). *Cirsium* seeds disperse via water ''considerable distances along streams'' (Craddock and Huenneke 1997, pp. 215-219). *Cirsium loncholepis* populations have been documented from the upper reaches of drainages and watersheds outlined below to suitable sites near the mouths of the rivers and creeks (within 1,000 ft (300 m)) of the Pacific Ocean (CNDDB 2007, unpaginated; Santa Barbara Botanic Garden Herbarium 2007, unpaginated; University of California Santa Barbara Herbarium 2007, unpaginated).

Sites for Reproduction, Population Growth, and Dispersal

Cirsium loncholepis has been reported from one or more polygons within 25 occurrences that are part of 11 populations distributed throughout 2 dune complexes and 4 drainages. All of these groupings are connected to each other in one or more ways. *Cirsium loncholepis* is closely associated with wetlands and mesic sites on the margins along four drainages that end in the Pacific Ocean (Arroyo Grande Creek, Santa Maria River, San Antonio Creek, and Santa Ynez River) (CNDDB 2007, unpaginated; CCH 2008, unpaginated). *Cirsium loncholepis* has not been seen along Arroyo Grande Creek since 1910; there is little suitable habitat remaining; most of the area is now urbanized by the cities of Oceano, Grover Beach, Pismo Beach, and Arroyo Grande Oaks or is currently under active agriculture; the remaining areas of suitable habitat have been separated from other historically and recently occupied habitat areas by this urbanization and agriculture; therefore, this area is not considered to be essential and is not discussed further in this rule. The dynamic nature of these drainages is an essential part of the life cycle for *C. loncholepis*. The habitat along these creeks and rivers is constantly changing. It is under a constant state of succession and renewal. A mosaic of habitat occurs along these drainages with new suitable sites being created with every storm or flow event. The flows of water are also an important mechanism to move seeds from currently occupied sites to these newly created suitable sites.

Orcutt Creek runs from the southeast to the northwest parallel with wind direction in the area. The headwaters for Orcutt Creek are southeast of the town of Orcutt on the northwest face of Graciosa Ridge. The stretch of Orcutt Creek near the town of Orcutt is within the area that is the most likely site where the type specimen was collected (see discussion in Background section of the proposed revised designation of critical habitat published in the **Federal Register** on August 6, 2008 (73 FR 45806) and our response to Comment 35). Orcutt Creek flows to the northwest and enters into the Santa Maria River near the Pacific Ocean. *Cirsium loncholepis* seeds that are deposited in the waters of Orcutt Creek would flow downstream from Orcutt toward the Santa Maria River. This stretch of the Santa Maria River has historically contained the largest population of *C. loncholepis*. Most of the records for *C. loncholepis* are from within the historical boundaries of the Santa Maria River floodplain.

Graciosa Ridge is the dividing line between the headwaters of Orcutt Creek (in the Santa Maria River watershed) and Cañada de las Flores (in the San Antonio Creek watershed). Because the prevailing winds in this area are from the northwest during most of the year, *Cirsium loncholepis* seed in the Orcutt area could be blown over Graciosa Ridge toward Cañada de las Flores, which is southeast of the headwaters of Orcutt Creek. Cañada de las Flores, which flows south, is the headwaters for one of the tributaries of San Antonio Creek which flows to the Pacific Ocean. Hunt (2008, 5 pp.) noted that Graciosa Ridge is a substantial geological formation and may be a formidable barrier between Orcutt Creek and Cañada de las Flores and posits that San Antonio Terrace and San Antonio Creek are more plausible seed sources for the Cañada de las Flores *C. loncholepis* population than Orcutt Creek. The estuary system (lagoon) at the mouth of San Antonio Creek was described by Fray Juan Crespi as La Graciosa in 1769 (Smith 1976, p. 282, 1998, pp. 153-154) and is also within the area that is the most likely site where the type specimen of *C. loncholepis* was collected (see Comment 35 and our response and our discussion in the Background section of the proposed revised designation of critical habitat published in the **Federal Register** on August 6, 2008 (73 FR 45806)).

The Santa Ynez River flows from east to west where it empties into the Pacific Ocean. The prevailing, strong winds in this area, from the west, would move *Cirsium loncholepis* seeds eastward, which is further upriver. Any resulting seed from upriver *C. loncholepis* populations that are deposited in the waters of the Santa Ynez River would then flow downstream toward the estuary system at the mouth of the river. Seed from any occurrence in the Santa Ynez River population would likely be dispersing to other occurrences in the Santa Ynez River (e.g., seed from upriver plants dispersing to the estuary via water and seed from estuary plants dispersing upriver via wind). The Santa Ynez River is a dynamic riparian system similar to the Santa Maria River with historical records of high flows and floods that can change the banks of the river, such as with the 1969 flood that reached a stage of 24.2 ft (7.4 m) above normal flow height (Linn 2008). These high flows create the new, unvegetated areas such as those that also occur along the Santa Maria River after high flows.

Habitats that are Representative of the Historical, Geographical, and Ecological Distributions of Cirsium loncholepis

Cirsium loncholepis has throughout time had a limited distribution in southwestern San Luis Obispo County and northwestern Santa Barbara County, California, within a unique geomorphic area known as the Santa Maria Basin (Hunt 1993, pp. 5-72). See Figure 1 for a map containing the locations of place and feature names in this region. The Santa Maria Basin stretches along a 39-mi (63-km) section of the coastal region of central California that is dominated by a system of dune complexes that are interspersed with several major drainages. The Santa Maria Basin is comprised of the Santa Maria Valley, in the north, and the Santa Ynez Valley, in the south. The Santa Maria Valley is located between the hills northeast of Pismo and the Casmalia and Solomon Hills that end at Point Sal in the west. The Santa Ynez Valley is located between the Casmalia and Solomon Hills and the Santa Ynez Mountains (on the south side of the Santa Ynez River). The Santa Maria Basin is dominated by moderate to strong winds from the northwest (categorized as greater than 7.47 miles per hour (mph) (12.02 kilometers per hour (kph)) most of the time and throughout the year (Hendrickson 1990, pp. 1-25; National Oceanic and Atmospheric Administration Western Regional Climate Center (NOAA) 2007,

unpaginated; USDA NRCS 2008, unpaginated). These prevailing northwest winds are a major factor in shaping the terrain and creating the dunes such that the active dune and swale systems are aligned with these winds (Hunt 1993, pp. 5-72). Deflation areas (the swales between two parallel dunes and behind the foredunes) are often at or near the water table, creating the wetlands and back-dune lakes (Hunt 1993, pp. 5-72). This terrain, the parallel ridges and swales, and the physical features that created and maintain it are essential for the conservation of *C. loncholepis*.

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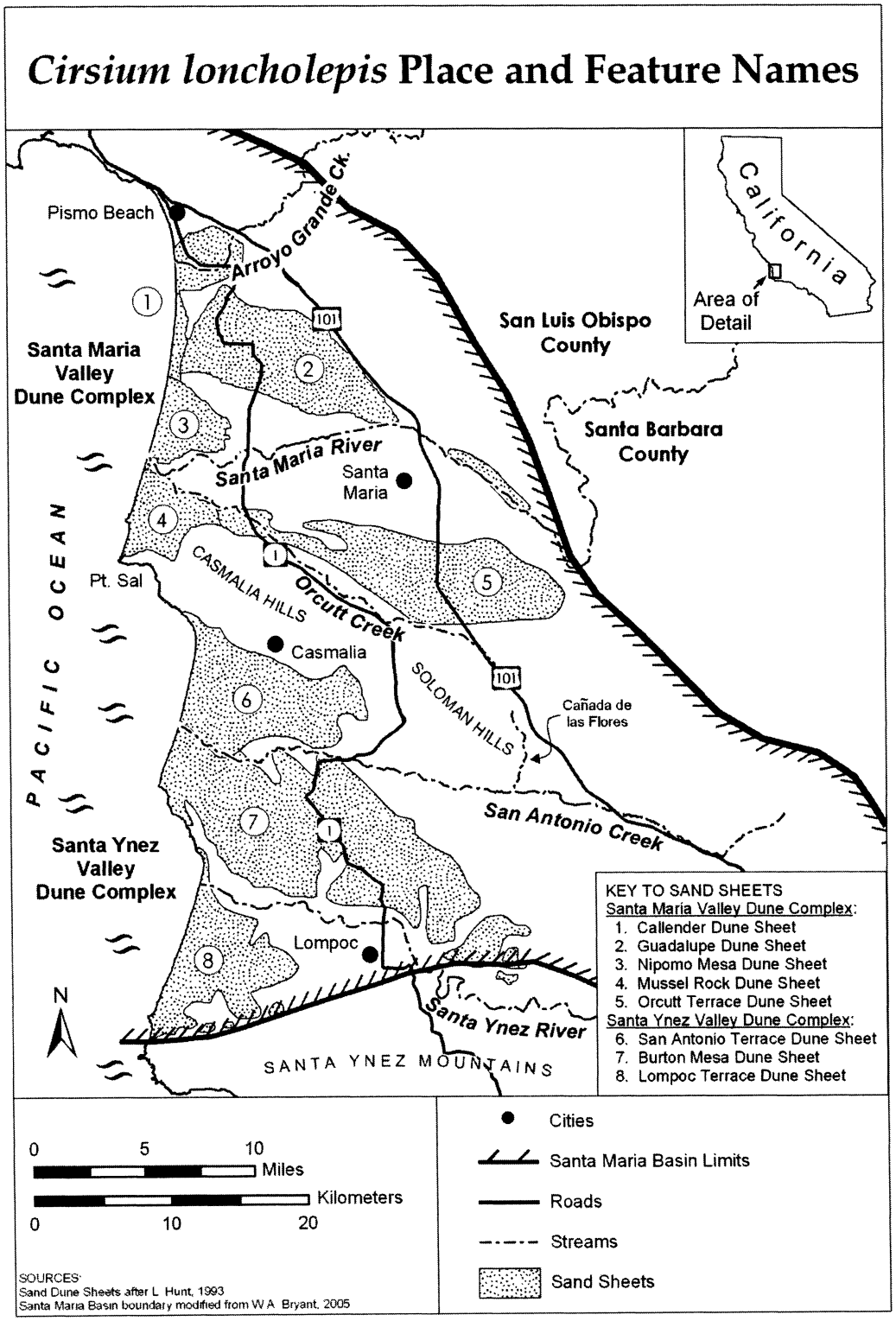

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Santa Maria Valley

The Santa Maria Valley contains one major dune complex (the Santa Maria Valley Dune Complex) and three major riparian systems (or drainages): Arroyo Grande Creek, the Santa Maria River, and Orcutt Creek. The Santa Maria Valley Dune Complex contains five Dune Sheets (or associated sand depositional episodes): Callender, Nipomo Mesa, Guadalupe, Mussel Rock, and Orcutt Terrace. Individual dune sheets represent sequential and spatially overlapped depositional episodes within contiguous areas of any particular dune complex. Arroyo Grande Creek and its floodplain are at the northern edge of the Callender Dune Sheet (specifically) and the Santa Maria Valley Dune Complex (in general) (Hunt 1993, pp. 5-72). The junction of Arroyo Grande Creek and the Callender Dune Sheet also marks the northern limit for *Cirsium loncholepis*, which occurred here in the low ''grassy'' areas among the sand hills at the junction of the dunes and Arroyo Grande Creek (University of California [Berkeley] Herbarium 2007, unpaginated). The Callender Dune Sheet reaches Oso Flaco Creek and Oso Flaco Lake at its southern extent. *Cirsium loncholepis* has occurred at numerous sites throughout the Callender Dunes (Hendrickson 1990, pp. 1-25; CNDDB 2007, unpaginated). The Guadalupe Dune Sheet extends from Oso Flaco Lake to the Santa Maria River. *Cirsium loncholepis* has occurred at numerous sites throughout the Guadalupe Dunes (Hendrickson 1990, pp. 1-25; CNDDB 2007, unpaginated). The Santa Maria Valley is a broad floodplain that is bounded by Orcutt Creek along its southern edge and by the Callender Dune Sheet and the Nipomo Dune Sheet (including Nipomo Mesa) along its northern edge. Between the city of Santa Maria and the coast 12 mi (19 km) to the west, the valley floor has historically been dotted with small settlements and a few oil fields, but the vast majority of the land has been converted to agriculture. A member of the Gaspar de Portola expedition to Monterey in 1769 noted that the expedition had difficulty getting through the Santa Maria Valley because of all the marshes (Companys 1983, pp. 105-344). As has been typical along the central coast of California, however, many of the valley's wetlands have been drained or filled to maximize agricultural production; old maps show lakes such as Lake Guadalupe that no longer exist. *Cirsium loncholepis* has occurred at numerous mesic sites throughout the Santa Maria River floodplain and the Guadalupe Dunes (Hendrickson 1990, pp. 1-25; CNDDB 2007, unpaginated). According to Wilken (2009b), the lowering of the water tables has adversely affected habitat conditions in the Santa Maria River Valley. Orcutt Creek and the Santa Maria River mark the northern edge of the Mussel Rock Dune Sheet, and Orcutt Creek and the Santa Maria River have had multiple *C. loncholepis* occurrences (Hendrickson 1990, pp. 1-25; CNDDB 2007, unpaginated). *Cirsium loncholepis* most likely had a more widespread distribution within this area, but may have been eliminated from most of the locations in this area by the vast conversion of this area to agriculture and extraction of groundwater before it could be documented. However, even with such conversion, current aerial photos and topographic maps show the persistence of numerous, small marshes, wetlands, and drainages in this area; some of these may still harbor small populations of *C. loncholepis*.

Santa Ynez Valley

The Santa Ynez Valley contains one major dune complex (the Santa Ynez Valley Dune Complex) and two major riparian systems (or drainages): San Antonio Creek and the Santa Ynez River. The Santa Ynez Valley Dune Complex contains three Dune Sheets: San Antonio, Burton Mesa, and Lompoc Terrace. The San Antonio Terrace Dune Sheet is at the northern edge of the Santa Ynez Valley Dune Complex. It supports numerous dune wetlands and swales and is very similar in habitat, physical, and geological features to the Callender and Guadalupe Dune Sheets (Hunt 1993, pp. 5-72; Google Earth 2008, unpaginated). San Antonio Creek is downwind on the southern edge of the San Antonio Terrace Dune Sheet. The mouth of San Antonio Creek is within the area that is the most likely site for the type locality (La Graciosa) for *Cirsium loncholepis* (Smith 1976, p. 282, 1998, pp. 153-154; Oyler *et al.* 1995, pp. 1-76; Hendrickson 1990, pp. 1-25; Keil and Holland 1998, pp. 83-84; Wilken 2009a, unpaginated) and still harbors numerous small marshes and wetlands that are apparent in aerial imagery (Google Earth 2008, unpaginated). Hunt (2008, unpaginated) believes that *Cirsium loncholepis* was historically much more widely distributed within the San Antonio Creek watershed. Historical collections indicate that *C. loncholepis* used to occur along the Santa Ynez River, somewhere between the towns of Surf and Lompoc, at the current edge of VAFB (University of Minnesota Saint Paul Herbarium 2007, unpaginated; Rancho Santa Ana Botanic Garden Herbarium 2007, unpaginated; Santa Barbara Botanical Garden Herbarium 2007, unpaginated; University of California Riverside Herbarium 2007, unpaginated). Collections of the plant were made here in 1958; however, by 1988 when surveys were conducted to relocate this population, none could be found (Hendrickson 1990, pp. 1-25). Over the years, some, but not all, habitat for *C. loncholepis* in the floodplain for the river has been altered. According to Smith's notes, agricultural fields have been plowed to the banks of the drainage, willows have been bulldozed, and herbicides were sprayed to eradicate *C. vulgare* (bull thistle) (Smith 1976, p. 282, 1998, pp. 153-154). According to Wilken (2009b), the lowering of the water tables has adversely affected habitat conditions in the Santa Ynez River Valley. Additionally, Wilken (2009b) stated that the current hydrological regulatory process in the Santa Ynez River may not be conducive to conditions favoring establishment of *C. loncholepis*. The hydrological regulatory process in the Santa Ynez River (i.e., artificial manipulation of surface flow and aquifer levels through impoundments, diversions, and groundwater extraction) is similar to that of the Santa Maria River. The effects of the current, altered hydrological regime and subsequent alteration of potential habitat for *C. loncholepis* should be considered in any plans for its successful recovery. Because this area historically supported the southernmost, documented *C. loncholepis* populations and because some habitat still remains today, it is considered to be an important area for the conservation of *C. loncholepis* (Morey 1990, pp. 1-13; U.S. Fish and Wildlife Service 2008, unpaginated).

Historically, *Cirsium loncholepis* has been reported or documented from a total of 25 occurrences as parts of 11 populations ranging from the dunes near Pismo Beach inland to hillside seeps at Cañada de las Flores south to the floodplains of the Santa Ynez River (CNDDB 2007, unpaginated; CCH 2008, unpaginated). Of these 25 occurrences; 8 were not considered in the final listing rule (65 FR 14888); 6 from San Antonio Terrace that were reported, but not documented in 1979; 1 newly documented in the Guadalupe Dunes in 2006; and 1 newly documented on the Guadalupe-Nipomo Dunes National Wildlife Refuge in 2007. Since the time of listing, we have received additional information indicating that the identities of the plants from the six occurrences on San Antonio Terrace were revised to *C. brevistylum* instead of

C. loncholepis (Linn, 2008, unpaginated; Wilken *et al.*, 2008, 13 pp.). At the time of the listing in 2000, there were 17 known occurrences of which 11 were extant. These 11 extant occurrences were distributed among seven populations (CNDDB 1998, unpaginated; 65 FR 14888, March 20, 2000). Since the time of listing in 2000, *C. loncholepis* has experienced considerable declines throughout its range in the number of both occurrences and populations and in the number of individuals within each of the remaining occurrences and populations. Currently, *C. loncholepis* is considered to be extant at seven occurrences that are distributed among four populations. The seven extant occurrences consist of five occurrences that were identified in the final listing rule in 2000 as well as two new occurrences that have been identified since that time (Elvin 2006, unpaginated, 2007b, unpaginated; CNDDB 2007, unpaginated). *Cirsium loncholepis* is not currently known to occur at the following populations: Oceano, northern Callender Dune Sheet Lakes, Guadalupe, La Graciosa, Cañada de las Flores, San Antonio Terrace Dune Sheet, and Santa Ynez River. Since the time of listing, the loss of known polygons, occurrences, and populations has outpaced the discovery of new polygons, occurrences, and populations.

In habitats that are fragmented and/or isolated, the trend for native plant species is one of decline (Soule *et al.* 1992, pp. 39-47). This supports the equilibrium theory of island biogeography (MacArthur and Wilson, 1963, pp. 373-387, 1967, 203 pp.) that predicts that species with populations that are isolated and have more extirpation events than re-colonization events will decline to zero (extinction). Recent research on species that are long-distance dispersers (such as *Cirsium loncholepis*) determined that when the distances between suitable habitat sites for a species become greater than its dispersal distance (such as due to habitat fragmentation); its long-term survival will be threatened unless the long-distance dispersal between the sites can be re-established (Trakhtenbrot *et al.* 2005, pp. 173-181). The study by Trakhtenbrot *et al.* (2005, pp. 173-181) regarding long-distance dispersal species supports the study by Soule *et al.* (1992, pp. 39-47) and the equilibrium theory of island biogeography (MacArthur and Wilson 1963, pp. 373-387, 1967, 203 pp.). Based on these studies, comments from peer reviewers, and our current understanding of this species and its decline, we believe that conserving solely the areas with the remaining known occurrences and populations of *C. loncholepis* is not sufficient to conserve or recover the species. The additional habitat that would provide connectivity between occurrences and populations is essential for the conservation of *C. loncholepis*. This is supported by Damschen *et al.* (2006, pp. 1284-1286), who showed that habitat patches that were connected by corridors benefitted wildlife and plants.

Primary Constituent Elements for *Cirsium loncholepis*

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of *Cirsium loncholepis*. The physical and biological features are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Areas designated as critical habitat for *C. loncholepis* contain both occupied and unoccupied areas within the species' historical 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 *Cirsium loncholepis* and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs specific to *Cirsium loncholepis* are:

(1) Mesic areas associated with: (a) margins of dune swales, dune lakes, marshes, and estuaries that are associated with dynamic (changing) dune systems including the Santa Maria Valley Dune Complex and Santa Ynez Valley Dune Complex; (b) margins of dynamic riparian systems including the Santa Maria and Santa Ynez Rivers and Orcutt and San Antonio Creeks; and (c) freshwater seeps and intermittent streams found in other habitats, including grassland, meadow, coastal scrub, chaparral, and oak woodland. These areas provide space needed for individual and population growth including sites for germination, reproduction, seed dispersal, seed bank, and pollination;

(2) Associated plant communities including: Central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), oak woodland, intermittent streams, and other wetland communities, generally in association with the following species: *Juncus* spp. (rush), *Scirpus* spp. (tule), *Salix* spp. (willow), *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), *Baccharis pilularis* (coyote brush), and *B. douglasii* (Douglas' baccharis);

(3) Soils with a sandy component including but not limited to dune sands, Oceano sands, Camarillo sandy loams, riverwash, and sandy alluvial soils; and

(4) Features that allow dispersal and connectivity between populations, particularly: (a) Natural riparian drainages in Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River that are not channelized or confined by barriers or dams, such that they have soft bottoms and sides and a natural flood plain (allowing uninterrupted water flows); and (b) Natural aeolian geomorphology in the Santa Maria Dune Complex and Santa Ynez Dune Complex, and along the Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River drainages that is not confined by barriers or wind-blocks such as large manmade structures, tree rows, or wind-breaks (allowing uninterrupted winds across these areas).

With this final revised designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the species. Some units contain all of these PCEs and support multiple life processes, while some units contain only a portion of these PCEs, those necessary to support the species' particular use of that habitat. Because not all life history functions require all the PCEs, not all critical habitat units will contain all the PCEs.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area occupied at the time of listing contain features essential to the conservation of the species that may require special management considerations or protection. We also considered how revising the current designation of critical habitat highlights habitat with essential features in need of special management considerations or protection.

Many of the known occurrences of *Cirsium loncholepis* are threatened by direct and indirect effects from energy-related operations (i.e., maintenance activities, hazardous waste cleanup); development that results in additional habitat modification or land use changes (i.e., conversion of agricultural and urban development); county zoning changes; issuance of development permits; non point source pollution

such as from urban and agricultural runoff (e.g., herbicides, fertilizers); facility accidents by oil companies or VAFB; groundwater extraction throughout the range of the species; hydrological alterations; direct and indirect effects from off highway vehicle (OHV) activity (i.e., habitat disturbance, hazardous materials spills); small population size; and habitat fragmentation and loss through the invasion of aggressive nonnative weeds such as *Ammophila arenaria* (European beach grass), *Carpobrotus* spp. (iceplant), *Ehrharta calycina* (veldt grass), and *Mesembryanthemum crystallinum* (crystalline iceplant) (Smith 1976, p. 282, 1998, pp. 153-154; Davis *et al.* 1988, pp. 169-195; Zedler and Schied 1988, pp. 196-201; Morey 1989, pp. 1-16; Hendrickson 1990, pp. 1-25; CDFG 1992, pp. 111-112; Odion *et al.* 1992, pp. 1-2; CNDDB 1998, unpaginated, 2008, unpaginated; Chesnut 1998a, unpaginated, 1998b, pp. 1-40; Keil 2006, unpaginated; Damschen 2008, unpaginated; Hunt 2008, 5 pp.; McEachern 2008, unpaginated; Orahoske 2008, unpaginated; Swenk 2008, 4 pp.; Thornton 2008, unpaginated; Murphy 2009, unpaginated; Wilken 2009b, unpaginated). These threats may require special management to ensure the long-term conservation of *C. loncholepis*. Threats specific to individual units are described in the unit descriptions below.

Criteria Used To Identify Critical Habitat

We analyzed the biology, life history, ecology, and distribution (historical, at the time of listing, and current) of *Cirsium loncholepis*. Based on this information, we are designating revised critical habitat in areas within the geographical area occupied by *C. loncholepis* at the time of listing in 2000. We also designate some specific areas outside the geographical area occupied by *C. loncholepis* at the time of listing, which although are currently unoccupied, are within the historical range of the species, and because we have determined that such areas are essential for the conservation of *C. loncholepis*.

To delineate revised critical habitat, we first determined occupancy within the extant range of *Cirsium loncholepis*. Occupancy status was determined using occurrence data from research and survey observations included in reports and other manuscripts (i.e., theses, monitoring reports); data from research and survey observations published in peer-reviewed articles; data submitted to the CNDDB; reports and survey forms prepared for Federal, State, and local agencies, and private corporations; written and oral communications from species and physical science experts; information from herbarium specimens; scientific information in our draft recovery outline for *C. loncholepis* (U.S. Fish and Wildlife Service 2008, unpaginated); and visits by Service biologists to *C. loncholepis* populations. Areas or sites containing data indicating occupancy from 1989 or later (within approximately the past 20 years) were considered currently occupied. We then determined which areas were occupied at the time of listing by comparing survey and collection information to descriptions of occupied areas in the final listing rule published on March 20, 2000 (65 FR 14888).

Based on these studies, comments from the public and peer reviewers, and our current understanding of the status of *Cirsium loncholepis* since the time of listing, the species continues to decrease in the number of populations, in the number of occurrences within populations, and in the number of individuals within the remaining occurrences and populations. Therefore, based on these data and comments from the peer reviewers, we determined that the areas in which the extant populations are distributed are alone not sufficient to conserve or recover it. Based on its decline, its biology, new scientific information on the biological conditions necessary for long-distance dispersal species (such as *C. loncholepis*), and comments from the peer reviewers, we have determined that habitat providing connectivity between the areas containing the extant populations is also essential for its conservation.

Once we determined the extant range of the species, we analyzed areas outside the geographical area occupied by *Cirsium loncholepis* at the time of listing, but within the historical range of the species, for areas that are essential. We first looked for large, continuous blocks of suitable habitat, such as the numerous mesic areas and seeps in and surrounding the lower reaches of the Santa Ynez River. We then looked for important corridors of suitable habitat that connect the large, continuous areas based on their abilities to disperse seed or pollen, such as the area along Orcutt Creek between the Guadalupe Dunes and Cañada de las Flores. We then analyzed the presence and characteristics of other features that are important to maintain the metapopulation dynamics for *C. loncholepis* in these areas (e.g., winds and their relationship to the formation of geographic features, movement patterns for various dispersal agents, watersheds, geology).

Within the Callender-Guadalupe Dune Unit, we only included areas of the OHV riding area that are within the existing fenced vegetation islands and the immediately adjacent dune habitats in areas that the vegetation islands are likely to migrate. To identify the specific boundaries of the final critical habitat subunits in this area, we utilized a formula developed in accordance with the following parameters. We developed the conformation of the vegetation island subunits of final critical habitat by migrating the outline of the existing fenced areas 80 m (262 ft) at a compass heading of 327 degrees (the prevailing wind vector for the area - approximately West Northwest). We derived a distance of 80 m (262 ft) by evaluating the rates of dune and vegetation island migration (Bowen and Inmand 1966, 43 pp.; CGS 2007, 113 pp.) within a time-frame relevant to ODSVRA planning horizons and *C. loncholepis* life history. A value of 4 m/yr (13 ft/yr), representing a mid-range estimate for the rate of dune and vegetation island movement within the Callender-Guadalupe Dunes (CGS 2007, 113 pp.), taken over a 20–year planning and recovery time-frame resulted in the 80-meter migration value. Final boundaries of the vegetation island subunits were created by combining the boundary of the existing fenced vegetation islands with the area described by the migrated fence boundary.

Using all the information above, we were able to discern areas that are potentially important for the recovery of *C. loncholepis*. From this, we then selected the extent of those areas that we consider to be essential to the conservation of the species. All of the areas that we are designating as critical habitat that are currently not known to be occupied by the species are essential for its conservation.

To map the revised critical habitat units (both those occupied at the time of listing and those outside the geographical area occupied by the species at the time of listing), we overlaid *Cirsium loncholepis* occurrences (current and historical) on soil series, vegetation types, and watershed/wetland data to determine appropriate polygons that would contain one or more PCEs in the quantity and spatial arrangement necessary to provide the features essential to the conservation of *C. loncholepis*. This taxon is closely associated with dynamic ecosystems such as dune and riparian watershed systems and with the presence of sandy soil types and mesic conditions, but it

also occurs in adjacent upland habitats and areas. Units were delineated by first mapping the occurrences (current and historical) and continuous and intervening suitable habitat, then considering other geographical features such as developed, urban, heavy recreational use (e.g., active OHV use lands), and agriculture (e.g., row crops) areas that are continuously maintained or utilized and removing areas with these features that did not contain the appropriate quantity and spatial arrangement of the PCEs essential to the conservation of the species.

When determining the revisions to critical habitat boundaries within this final rule, we made every effort to avoid including developed areas, such as buildings, paved areas, and other structures, as well as active heavy use OHV areas and tilled fields and row crops that lack the PCEs for *Cirsium loncholepis*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of all such developed areas. Any such areas inadvertently left inside critical habitat boundaries shown on the maps of this final revision to critical habitat are excluded by text in the revision and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

Using the above criteria, we identified six units that contain the necessary features essential to the conservation of *Cirsium loncholepis*. These six units are located near the Pacific Coast in southwestern San Luis Obispo and northwestern Santa Barbara Counties. The northern-most unit consists of the dune system from Pismo Beach to the Santa Maria River in San Luis Obispo County. The second unit consists of the lower reaches of the Santa Maria River in San Luis Obispo and Santa Barbara Counties and of Orcutt Creek in Santa Barbara County. The remaining units are all within Santa Barbara County: one at Cañada de las Flores, one along the lower reaches of San Antonio Creek, one on San Antonio Terrace, and one along portions of the lower reaches of the Santa Ynez River.

We are designating critical habitat on lands that meet the first prong of the definition of critical habitat and, therefore, were determined to be occupied at the time of listing and contain the physical and biological features essential for the conservation of the species. We are also designating critical habitat on lands that meet the second prong of the definition of critical habitat and, therefore, consist of specific areas outside the geographical area occupied by the species at the time it is listed that are essential for the conservation of the species. The revision to critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Cirsium loncholepis* throughout its range and provide the necessary features that are essential for the conservation of the species. The essential features include: (1) space for individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal; (2) areas that allow gene flow and provide connectivity between occupied areas; and (3) areas that provide basic requirements for growth, such as appropriate soil type and openings within vegetation cover. All revised critical habitat units were delineated based on the appropriate quantity and spatial arrangement of PCEs being present to support *C. loncholepis* life processes essential to the conservation of the species.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed animal species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and incidental take permit 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. We are currently unaware of any areas within this critical habitat designation that fall into this category.

Final Critical Habitat Designation

The critical habitat areas described below constitute our current best assessment of areas determined to meet the definition of critical habitat for *Cirsium loncholepis*. We are designating approximately 24,103 ac (9,754 ha) of land as critical habitat for *C. loncholepis* in six units. Table 2 outlines these units and provides the approximate areas being designated as critical habitat.

TABLE 2—CRITICAL HABITAT UNITS FOR *CIRSIUM LONCHOLEPIS* IN CALIFORNIA; LAND OWNERSHIP AND FINAL SIZE OF EACH AREA

Critical habitat unit	Land ownership	Area that meets the definition of critical habitat	Area excluded from final critical habitat	Estimate of total acreages designated as critical habitat
1. Callender-Guadalupe Dunes				
1A. Callender-Guadalupe	Federal	2,404 ac (973 ha)	0 ac (0 ha)	2,404 ac (973 ha)
	State	1,863 ac (754 ha)	0 ac (0 ha)	1, 863 ac (754 ha)
	Local	80 ac (32 ha)	0 ac (0 ha)	80 ac (32 ha)
	Private	5,176 ac (2,095 ha)	0 ac (0 ha)	5,176 ac (2,095 ha)
1B. Moymell	State	<1 ac (<1 ha)	0 ac (0 ha)	<1 ac (<1 ha)
	Local	3 ac (1 ha)	0 ac (0 ha)	3 ac (1 ha)
	Private	<1 ac (<1 ha)	0 ac (0 ha)	<1 ac (<1 ha)
1C. Pavillion Hill/Worm Valley	State	2 ac (1 ha)	0 ac (0 ha)	2 ac (1 ha)
	Local	27 ac (11 ha)	0 ac (0 ha)	27 ac (11 ha)
	Private	<1 ac (<1 ha)	0 ac (0 ha)	<1 ac (<1 ha)
1D. BBQ Flats	State	<1 ac (<1 ha)	0 ac (0 ha)	<1 ac (<1 ha)
	Local	7 ac (3 ha)	0 ac (0 ha)	7 ac (3 ha)

TABLE 2—CRITICAL HABITAT UNITS FOR *CIRSIUM LONCHOLEPIS* IN CALIFORNIA;—Continued

LAND OWNERSHIP AND FINAL SIZE OF EACH AREA

Critical habitat unit	Land ownership	Area that meets the definition of critical habitat	Area excluded from final critical habitat	Estimate of total acreages designated as critical habitat
1E. BBQ Flats South	State ..... Local	<1 ac (<1 ha) 3 ac (2 ha)	0 ac (0 ha) 0 ac (0 ha)	<1 ac (<1 ha) 3 ac (2 ha)
1F. Heather	State ..... Local	<1 ac (<1 ha) 6 ac (2 ha)	0 ac (0 ha) 0 ac (0 ha)	<1 ac (<1 ha) 6 ac (2 ha)
1G. Acacia	State ..... Local ..... Private	1 ac (<1 ha) 4 ac (2 ha) <1 ac (<1 ha)	0 ac (0 ha) 0 ac (0 ha) 0 ac (0 ha)	1 ac (<1 ha) 4 ac (2 ha) <1 ac (<1 ha)
1H. Cottonwood	Local	9 ac (4 ha)	0 ac (0 ha)	9 ac (4 ha)
1I. Eucalyptus North	State ..... Local	2 ac (1 ha) 7 ac (3 ha)	0 ac (0 ha) 0 ac (0 ha)	2 ac (1 ha) 7 ac (3 ha)
1J. Eucalyptus South	State ..... Private	19 ac (8 ha) 3 ac (1 ha)	0 ac (0 ha) 0 ac (0 ha)	19 ac (8 ha) 3 ac (1 ha)
1K. Indian Midden South	State ..... Private	2 ac (1 ha) 1 ac (<1 ha)	0 ac (0 ha) 0 ac (0 ha)	2 ac (1 ha) 1 ac (<1 ha)
1L. Boyscout North	State	11 ac (4 ha)	0 ac (0 ha)	11 ac (4 ha)
1M. Tabletop	State	14 ac (6 ha)	0 ac (0 ha)	14 ac (6 ha)
1N. 1	State	2 ac (1 ha)	0 ac (0 ha)	2 ac (1 ha)
1O. 2	State	1 ac (<1 ha)	0 ac (0 ha)	1 ac (<1 ha)
1P. Pipeline	State	42 ac (17 ha)	0 ac (0 ha)	42 ac (17 ha)
Unit 1 Subtotals by ownership	Federal ..... State ..... Local ..... Private	2,404 ac (973 ha) 1,959 ac (793 ha) 147 ac (59 ha) 5,181 ac (2,097 ha)	0 ac (0 ha) 0 ac (0 ha) 0 ac (0 ha) 0 ac (0 ha)	2,404 ac (973 ha) 1,959 ac (793 ha) 147 ac (59 ha) 5,181 ac (2,097 ha)
Subtotal		**9,690 ac (3,921 ha)**	**0 ac (0 ha)**	**9,690 ac (3,921 ha)**
2. Santa Maria River-Orcutt Creek	Federal ..... State ..... Local ..... Private	0 ac (0 ha) 252 ac (102 ha) 542 ac (219 ha) 12,432 ac (5,031 ha)	0 ac (0 ha) 0 ac (0 ha) 0 ac (0 ha) 0 ac (0 ha)	0 ac (0 ha)252 ac (102 ha)542 ac (219 ha)12,432 ac (5,031 ha)
Subtotal		**13,227 ac (5,353 ha)**	**0 ac (0 ha)**	**13,227 ac (5,353 ha)**
3. Cañada de las Flores	Private	740 ac (299 ha)	0 ac (0 ha)	740 ac (299 ha)
4. San Antonio Creek 4A. La Graciosa 4B. Barka Slough	Federal ..... Private ..... Private	4,151 ac (1,680 ha) 3 ac (1 ha) 182 ac (74 ha)	4,151 ac (1,680 ha) 0 ac (0 ha) 0 ac (0 ha)	0 ac (0 ha) 3 ac (1 ha) 182 ac (74 ha)
Subtotal		**4,335 ac (1,754 ha)**	**4,151 ac (1,680 ha)**	**185 ac (75 ha)**
5. San Antonio Terrace	Federal ..... Private	7,282 ac (2,947 ha) 52 ac (21 ha)	7,282 ac (2,947 ha) 0 ac (0 ha)	0 ac (0 ha) 52 ac (21 ha)
Subtotal		**7,334 ac (2,968 ha)**	**7,282 ac (2,947 ha)**	**52 ac (21 ha)**
6. Santa Ynez River 6A. Ocean Park 6B. Surf 6C. Lompoc	 Local ..... Private ..... Private ..... Federal	 35 ac (14 ha) 12 ac (6 ha) 32 ac (13 ha) 2,444 ac (990 ha)[1]	 0 ac (0 ha) 0 ac (0 ha) 0 ac (0 ha) 2,272 ac (919 ha)	 35 ac (14 ha) 12 ac (6 ha) 32 ac (13 ha) 132 ac (53 ha)
Subtotal		**2,482 ac (1,005 ha)**	**2,272 ac (919 ha)**	**210 ac (85 ha)**
Total		**37,810 ac (15,300 ha)**	**13,705 ac (5,546 ha)**	**24,103 ac (9,754 ha)**

[1] 43 ac (18 ha) were listed as private property in the proposed revised designation, but current information indicates that this area is federal property.

Below, we present brief descriptions of the units designated as critical habitat for *Cirsium loncholepis*. For more information about the areas excluded from critical habitat, please see the Exclusions Under Section 4(b)(2) of the Act and Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) sections of this final rule.

Unit 1: Callender-Guadalupe Dunes (9,690 ac (3,921 ha))

Unit 1 is located in the southwestern corner of San Luis Obispo County, California. It stretches along 8.5 mi (13.5 km) of coast from Arroyo Grande Creek to the Santa Maria River. This unit is south of Pismo Beach, west of Nipomo and north of Guadalupe. Unit 1 was occupied at the time of listing, is currently occupied, and contains the physical and biological features essential to the conservation of the species (65 FR 14888, March 20, 2000; Elvin 2006, unpaginated, 2007a, unpaginated; CNDDB 2007, unpaginated). Unit 1 is essential because it contains three of the four remaining *C. loncholepis* populations. These three populations represent the northern-most populations of the species, and it includes the largest block of native habitat still occupied by *C. loncholepis*. While all of these three remaining populations and the 9,690 ac (3,921 ha) of habitat in this unit are essential for this species to survive, maintaining only these populations and habitat does not appear to be sufficient for the long term survival of this species because four occurrences (of eight known at the time of listing) within the three populations in this unit have not been observed since 1990 and are considered to be extirpated. This unit also supported two occurrences in the Guadalupe/Callender Dunes that have since been extirpated where the water table has been lowered (due to ground water pumping) (Keil 2006).

Unit 1 is comprised of sixteen subunits totaling 2,404 ac (973 ha) of Federal lands; 1,959 ac (793 ha) of State lands; 147 ac (59 ha) of County and other local jurisdiction land; and 5,181 ac (2,097 ha) of private land (174 ac (70 ha) of which belongs to non-governmental organizations (NGOs)). Unit 1 includes a portion of the Guadalupe-Nipomo Dunes National Wildlife Refuge, Pismo Dunes State Preserve, Oceano Dunes State Vehicular Recreation Area, and privately owned lands. Unit 1 is located within the Santa Maria Valley Dune Complex (Hunt 1993, pp. 5-72). This dune complex contains numerous mesic areas on the margins of dune swales, dune lakes, marshes, and estuaries within the dynamic (changing) Callender and Guadalupe Dune Sheets (PCE 1).

We included polygons of vegetation that occur and are fenced off within the OHV riding area of ODSVRA because they are essential to the conservation of the species. We attempted to delineate the boundaries based on the best available science, with the understanding that this is a dynamic ecosystem and it has been documented that these vegetation islands move over time (CGS 2007, 113 pp.). The habitat patches (including dune swales and vegetation islands) move up to 120 m over a 20–year time frame (CGS 2007, 113 pp.); therefore, we developed a formula to determine the predicted migration of these patches over the next 20 years. For a description of this formula, please see the Criteria Used to Identify Critical Habitat section of this rule.

The areas within the habitat patches (including vegetation and open sand dune swales) containing PCEs in the appropriate quantity and spatial arrangement necessary to provide the features essential to the conservation of *Cirsium loncholepis* are essential and therefore, pursuant to this rule, are being designated as critical habitat. However, the areas within the boundaries of these polygons that are outside of the habitat patches (but within the OHV riding area of ODSVRA) and are used on a regular basis for OHV recreation do not currently contain PCEs in the appropriate quantity and spatial arrangement necessary to provide the features essential to the conservation of *C. loncholepis*. These areas are designated as critical habitat because the vegetation islands will migrate beyond their current boundaries in the foreseeable future.

These vegetation islands contain suitable habitat and are adjacent to currently occupied and historically occupied sites. The vegetation islands are northwest of a large continuous block of occupied habitat. The Callender Dunes are dominated by moderate to strong winds from the northwest (categorized as greater than 7.47 mph (12.02 kph) most of the time and throughout the year (NOAA 2007, unpaginated; USDA NRCS 2008, unpaginated). However, moderate to strong winds from the southeast also occur in this area during parts of the year (November through February), which overlaps with at least 2 months of the approximately 5–month period that seeds are dispersed from the remains of the flowering stalk (August through December). These winds are an essential dispersal vector that helps move *Cirsium loncholepis* seeds between areas of suitable habitat; as a result, the vegetated islands become essential in maintaining connectivity within and between occurrences and populations. Further, several peer reviewers indicated that for fugitive species (i.e., species that move from place to place through time) like *C. loncholepis* that also rely on long-distance dispersal, adjacent occupied and unoccupied suitable habitat is essential for survival. These vegetation islands meet this need for the species, and provide a shifting mosaic of habitats that depend upon geomorphic processes operating across large landscape areas for their maintenance.

The geomorphological processes that shaped/developed the terrain features in the Santa Maria Valley Dune Complex are intact and continue to rejuvenate and maintain the dynamic dune and riparian features and processes of the constantly shifting mosaic of terrain, vegetation, and wetlands (PCE 4). The vegetation in the dunes includes central dune scrub, coastal dune, coastal scrub, coastal freshwater marsh and fen, riparian scrub, chaparral, and oak woodland (PCE 2) (Cooper 1967, pp. 75-90; Holland 1986, pp. 1-156; Hunt 1993, pp. 5-72; CNDDB 2007, unpaginated; CNPS 2008, unpaginated). The soils throughout the dunes are dominated by sand (PCE 3). The dunes support a wide diversity of flora and fauna including numerous insects, many of which are pollinators for *Cirsium loncholepis*, and hummingbirds (Martin *et al.* 1951, pp. 92-277; Krombein *et al.* 1979, Vol. 2 pp. 1751-2209; Blecha *et al.* 2007, pp. 1-354; Keil 2008, unpaginated). The dunes also support numerous small mammal and bird species (Blecha *et al.* 2007, pp. 1-354) that act as dispersal vectors for *C. loncholepis* seed (PCE 4). This unit contains large tracts of undeveloped land including dunes, wetlands, and upland areas occupied by the species and its pollinators (PCEs 1, 2, 3, and 4). The dynamic geomorphological processes, mosaic of habitats, and diversity of flora and fauna provide for and enhance the dispersal of genetic material of *C. loncholepis* between and among the various populations (and occurrences) within this dune complex and provide adjacent uplands for pollinators (PCEs 1, 3, and 4).

The prevailing, strong wind patterns blow southeast across the lower Santa Maria River Valley, up Orcutt Creek, past the town of Orcutt, and beyond Graciosa Ridge to Cañada de las Flores. These winds are an essential dispersal vector that help move plants/seeds from the *Cirsium loncholepis* populations in the Callender and Guadalupe Dunes to

populations in the Santa Maria River, Orcutt Creek, and Cañada de las Flores and are essential in maintaining connectivity between populations in the Santa Maria River Valley and those in the San Antonio Creek and Santa Ynez River Valleys.

The essential features found in Unit 1 may require special management considerations or protection resulting from: (1) direct and indirect effects from energy-related operations (i.e., maintenance activities, hazardous waste cleanup, facility accidents); (2) ground water extraction which lowers the water table, dries the wetlands, and can destroy surface and subsurface hydrologies; (3) stochastic (i.e., random) extirpation/extinction events that occur because the population size is small or isolated; (4) trampling and grazing from trespass of cattle; (5) competition from invasive, aggressive, nonnative weeds (e.g., *Ammophila arenaria* , *Carpobrotus* spp., *Ehrharta calycina, Mesembryanthemum crystallinum*); (6) direct and indirect effects from OHV activity (i.e., habitat disturbance, hazardous materials spills); (7) habitat fragmentation; and (8) nutrient inputs in the water systems that are above concentrations known to adversely affect freshwater ecosystems and cause adverse ecological effects including altering the composition of the plant community and inducing biostimulation (Smith 1976, p. 282, 1998, pp. 153-154; Davis *et al.* 1988, pp. 169-195; Zedler and Schied 1988, pp. 196-201; Morey 1989, pp. 1-16; Hendrickson 1990, pp. 1-25; CDFG 1992 pp. 111-112; Odion *et al.* 1992, pp. 1-2; Chesnut 1998a, unpaginated, 1998b, pp. 1-40; CNDDB 1998, unpaginated, 2008, unpaginated; Dodds *et al.* 1998, pp. 1455-1462; Central Coastal Ambient Monitoring Program 2002, pp. 1-60; California State Water Resources Control Board 2006, pp. 1-71; Elvin 2006, unpaginated; Keil 2006, unpaginated; Damschen 2008, unpaginated; Hunt 2008 5 pp.; Murphy 2009, unpaginated).

Unit 2: Santa Maria River-Orcutt Creek (13,227 ac (5,353 ha))

Unit 2 is located along the lower 5 mi (8 km) of the Santa Maria River and along the length of Orcutt Creek (approximately 13 mi (21 km)) in San Luis Obispo and Santa Barbara Counties, California. Unit 2 was occupied at the time of listing, is currently occupied, and contains the physical and biological features essential to the conservation of the species (65 FR 14888, March 20, 2000; CNDDB 2007, unpaginated). Unit 2 is essential because it contains the last *Cirsium loncholepis* population in riparian habitat. Unit 2 also contains what has historically been recognized as the largest *C. loncholepis* population with an estimated 54,000 individuals being reported in 1990 (Hendrickson 1990, pp. 1-25; CNDDB 2007, unpaginated). However, only about 25 plants were observed in the lower 0.9 mi (1.5 km) stretch of the Santa Maria River when visited in November 2006 (Elvin 2006, unpaginated). This unit contains large blocks of intact riparian habitat along the Santa Maria River and the southwest side of Orcutt Creek. Unit 2 is also essential as a dispersal corridor between the Santa Maria Valley and the Santa Ynez Valley.

Unit 2 is comprised of 252 ac (102 ha) of State land; 542 ac (219 ha) of County and other local jurisdiction land; and 12,432 ac (5,031 ha) of private lands. Unit 2 includes Rancho Guadalupe Dunes Park in Santa Barbara County. Unit 2 is located within the broad Santa Maria Valley, in the floodplains of the lower Santa Maria River and Orcutt Creek. Unit 2 is also within the Santa Maria Valley Dune Complex (Hunt 1993, pp. 5-72). It skirts the edges of the Guadalupe Dune Sheet to the north of the Santa Maria River, the Mussel Rock Dune Sheet to the southeast of Orcutt Creek and the Santa Maria River, and the Orcutt Terrace Dune Sheet to the northeast of the upper reaches of Orcutt Creek (Hunt 1993, pp. 5-72). These drainages and the adjacent dune sheets contain numerous mesic areas on the margins and floodplains of the river and creek and freshwater seeps and in grasslands, coastal scrub, and chaparral in the adjacent dune sheets (PCEs 1, 2, 3 and 4).

The geomorphological processes (fluvial and aeolian) that shaped and developed the terrain features in the Santa Maria Valley Dune Complex are intact and continue to affect the dynamic dune and riparian features and processes and their associated habitats in this unit (PCEs 1, 2, 3, and 4). The more interior portions of this unit are primarily within the lower portion of the Santa Maria River Valley where conversion to agricultural production to the edges of the river and the northeastern edge of the creek has occurred. The lower 5 mi (8 km) of the Santa Maria River remain intact with riparian scrub vegetation, sandy alluvial soils (PCEs 2 and 3), and dynamic fluvial geomorphological processes, which allow it to operate as a dynamic riparian system with uninterrupted water flows (PCEs 1 and 4). Pockets of numerous small marshes, wetlands, and drainages are still interspersed within the agricultural fields along Orcutt Creek, and the dynamic processes that rejuvenate and maintain the ever-changing mosaic of coastal scrub and riparian habitats are still largely intact (PCEs 1, 2, and 3). Additionally, areas to the southwest of Orcutt Creek contain large blocks of intact habitat (PCEs 1, 2, and 3) including suitable upland habitat areas between the intermittent streams and freshwater seeps (PCE 1) that provide habitat for pollinators and other dispersal vectors (PCE 4) such as birds and small mammals that move *Cirsium* seed. The vegetation in this unit includes central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, oak woodland, and intermittent streams (PCE 2) (Holland 1986, pp. 1-156; Elvin 2006, unpaginated; CNDDB 2007, unpaginated; CNPS 2008, unpaginated). The soils in this unit are predominantly sandy (U.S. Department of Agriculture, Natural Resources Conservation Service (USDA NRCS) 2000, unpaginated, 2005, unpaginated) (PCE 3).

Unit 2 is dominated by the prevailing, moderate to strong winds from the northwest that blow southeast along the length of Orcutt Creek, which would then function as a dispersal corridor for *Cirsium loncholepis* seed from the dunes to Cañada de las Flores. These winds help move seeds from the populations in the Callender and Guadalupe Dunes to pocket wetlands along Orcutt Creek, to seeps and intermittent drainages southwest of the creek (along the Mussel Rock Dune Sheet), and eventually to the *C. loncholepis* population at Cañada de las Flores (PCEs 1 and 4). Orcutt Creek also acts as a dispersal vector by carrying seed from upstream plants down to the Santa Maria River population (PCE 1 and 4). These intermittent wetland sites or ''pocket wetlands'' and the intervening habitat areas are essential to maintain connectivity between more distant populations (Higgins and Richardson 1999, pp. 464-475; Trakhtenbrot *et al.* 2005, pp. 173-181), particularly between those in the Santa Maria Valley and those in the San Antonio Creek and Santa Ynez Valleys. These pocket wetlands also act as important core areas for *C. loncholepis*.

The essential features found in Unit 2 may require special management considerations for or protection from: (1) nutrient inputs in the water systems that are above concentrations known to adversely affect freshwater ecosystems and cause adverse ecological effects including altering the composition of the plant community and inducing biostimulation; (2) ground water extraction, which lowers the water

table, dries the wetlands, and can destroy surface and subsurface hydrologies; (3) stochastic (i.e., random) extirpation/extinction events that occur because the population size of some occurrences is small or isolated; (4) trampling and grazing from cattle; (5) competition from invasive, aggressive, nonnative weeds (e.g., *Ammophila arenaria, Carpobrotus* spp., *Ehrharta calycina, Mesembryanthemum crystallinum*); (6) County zoning permits development within the floodplain with minimal setbacks from creeks; (7) non-point source pollution runoff from agricultural (i.e., herbicide, fertilizer) and urban areas; (8) habitat fragmentation; and (9) flood control measures (Smith 1976, p. 282, 1998, pp. 153-154; Davis *et al.* 1988, pp. 169-195; Zedler and Schied 1988, pp. 196-201; Morey 1989, pp. 1-16; Hendrickson 1990, pp. 1-25; CDFG 1992, pp. 111-112; Odion *et al.* 1992, pp. 1-2; Chesnut1998a, unpaginated, 1998b, pp. 1-40; CNDDB 1998, unpaginated, 2007, unpaginated; Dodds *et al.* 1998, pp. 1455-1462; Central Coastal Ambient Monitoring Program 2002, pp. 1-60; California State Water Resources Control Board 2006, pp. 1-71; Elvin 2006, unpaginated; Keil 2006, unpaginated; Damschen 2008, unpaginated; Hunt 2008 5 pp.; Swenk 2008, 4 pp.; Wilken 2009b, unpaginated).

Unit 3: Cañada de las Flores (740 ac (299 ha))

Unit 3 is located approximately 5 mi (8 km) northwest of the town of Los Alamos and southwest of the Solomon Hills in Santa Barbara County, California. Unit 3 was considered to be occupied at the time of the listing and at the time critical habitat was designated for this species in 2004. *Cirsium loncholepis* may still be extant at Cañada de las Flores; however, it was last documented at this site in 1987 (Thornton 2008, unpaginated) and last reported in 1989 (Hendrickson 1990, pp. 1-25). Some habitat conditions at the site have declined due to grazing intensity, but the basic suitable habitat conditions are still present (e.g., freshwater seeps and native vegetation) (Elvin 2007a, unpaginated). The best available scientific and commercial data indicate that this site was last documented as occupied in 1987 and reported in 1989. Therefore, based on the continued lack of observation of *C. loncholepis* since 1989 (Hendrickson 1990, pp. 1-25; 65 FR 14888, March 20, 2000; CNDDB 2007, unpaginated; Elvin 2007b, unpaginated; CCH 2008, unpaginated; Thornton 2008, unpaginated; Kisner 2009, unpaginated), we consider Cañada de las Flores to be unoccupied for the purposes of this rule. The population in Unit 3 represented the eastern-most and farthest-inland location at which *Cirsium loncholepis* has been documented. Additionally, Unit 3 occurs at a pivotal location for the species as a whole; it is down-wind from populations in the Santa Maria Valley and areas on San Antonio Terrace and along San Antonio Creek (Hunt 2008, 5 pp.) and upstream from populations in the San Antonio Valley (e.g., the mouth of San Antonio Creek (one of the potential type locality sites for *C. loncholepis*) and San Antonio Terrace Dunes). Therefore, the Cañada de las Flores location is essential to maintain connectivity between populations in the Santa Maria Valley and populations in the San Antonio Creek and Santa Ynez Valleys (PCE 4) and contains habitat for a core population area. Thus it is essential for the conservation of the species.

Unit 3 is comprised of 740 ac (299 ha) of private land at the head of Cañada de las Flores in Santa Barbara County, California. Unit 3 contains mesic areas at the edge of freshwater seep, marsh, meadow, grassland, chaparral, and oak woodland habitats (PCEs 1 and 2). We consider the two *Cirsium loncholepis* occurrences that have been recorded (and may still occur) here to be part of one population that has expanded at times to represent one large polygon of plants (CNDDB 2007, unpaginated; Elvin 2007a, unpaginated). Cañada de las Flores has slightly different environmental conditions than the coastal areas; specifically, it is at a higher elevation (200 ft (61 m)) and has a warmer climate. Preserving any genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions would be important for the long-term survival and conservation of the species. Cañada de las Flores is mapped as Camarillo sandy loam with sand visible on the surface throughout the floor and lower portions of the surrounding hills/ridges in the canyon (PCE 3) (U.S. Soil Conservation Service 1972, unpaginated; Hendrickson 1990, pp. 1-25; CNDDB 2007, unpaginated; Elvin 2007a, unpaginated). It is thus essential for the conservation of the species.

Unit 4: San Antonio Creek (185 ac (75 ha))

Unit 4 is located in the northwestern portion of Santa Barbara County, California. The majority of Unit 4 lands occur on VAFB. Most of the mission-critical projects and activities on VAFB are confined to areas outside of wetlands in general, and San Antonio Creek in particular. The few known land uses in and immediately adjacent to San Antonio Creek consist of agriculture leases and transportation and communications crossings (SRS Technologies 2007, pp. 1-35). There are many sensitive resources along San Antonio Creek including jurisdictional wetlands, cultural resources, and sensitive species (SRS Technologies 2003, pp. 1-1 to- 9-14; SRS Technologies 2007, pp. 1-35). Management activities for these resources may also benefit *Cirsium loncholepis*. Unit 4 was not considered to be occupied at the time of listing, and is currently considered to be unoccupied, although it is within the historical distribution of the species. We determined that all lands in Unit 4 (4,335 ac (1,754 ha)), which stretch along the lower 11 mi (17 km) of San Antonio Creek, are essential to the conservation of *C. loncholepis*. The mouth of San Antonio Creek is within the area that is the most likely location for the type locality for *Cirsium loncholepis* (Eastwood 1906, unpaginated; Smith 1976, p. 282, 1998, pp. 153-154; Hendrickson 1990, pp. 1-25; Oyler *et al.* 1995, pp. 1-76; California Academy of Sciences Herbarium 2007, unpaginated). We are excluding 4,151 ac (1,680 ha) of lands on VAFB owned by the DOD from this revised designation due to potential impacts to national security and are designating two subunits, one at the lower end of San Antonio Creek near the mouth (Subunit 4A – La Graciosa) and one upstream near Barka Slough (Subunit 4B – Barka Slough). Please see the section below entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) for an in-depth discussion of this exclusion.

Unit 4 is comprised of two subunits totaling 185 ac (75 ha) of private lands. Subunit 4A (La Graciosa) is near the mouth of the creek and consists of 3 ac (1 ha) of private property that spans San Antonio Creek. The lands in Subunit 4A consist of the creek, riparian areas on both banks, the flood plain on both sides of the creek, and riparian, mesic, and upland scrub habitats that stretch up the adjacent slopes to the mesas. Subunit 4B (Barka Slough) is approximately 11 mi (18 km) from the Pacific Ocean and consists of 182 ac (74 ha) of private property on the east side of Barka Slough. The lands in Subunit 4B consist of marshy areas on both sides of the creek with riparian, mesic, and upland scrub habitats to the adjacent slopes. Unit 4 is located within the Santa Ynez Valley Dune Complex, and

San Antonio Creek is one of the two major drainages in it (Hunt 1993, pp. 5-72). San Antonio Creek is the geological feature that separates the San Antonio Dune Sheet and the Burton Mesa Dune Sheet. This drainage and the adjacent dune sheets contain numerous mesic areas on the margins of the creek and its floodplain; in freshwater marshes (e.g., Barka Slough); and in freshwater seeps in adjacent grasslands, coastal scrub, chaparral, and the adjacent dune sheets that allow for dispersal (PCEs 1, 3, and 4) (Cooper 1967, pp. 75-90; Dial 1980, pp. 1-100; Hunt 1993, pp. 5-72; CNDDB 2007, unpaginated).

The geomorphological processes (fluvial and aeolian) that shaped and developed the terrain features in the San Antonio Valley are intact and continue to affect the dynamic riparian and adjacent dune features and processes in this unit (PCEs 1 and 4). The lower 10 mi (16 km) of San Antonio Creek remain intact with riparian scrub, woodland, and forest vegetations (PCE 2); sandy alluvial soils (PCE 3); and dynamic fluvial geomorphological processes, which allow it to operate as a dynamic riparian system with uninterrupted flows of water (PCEs 1 and 4). Numerous small marshes, wetlands, and intermittent tributary drainages still occur naturally along this stretch of San Antonio Creek and the dynamic processes that rejuvenate and maintain the riparian habitats are still largely intact here (PCEs 1 and 4) (Dial 1980, pp. 1-100; Keil 1997, pp. 1-12; SRS Technologies 2003, pp. 1-1 to 9-14; SRS Technologies 2007 pp. 1-35; Google Earth 2008, unpaginated). Additionally, areas adjacent to the creek on both sides still contain large blocks of intact habitat (PCEs 1, 2 and 4) and include suitable upland habitat areas between the intermittent streams and freshwater seeps (PCEs 1 and 2) that provide habitat for pollinators and other dispersal vectors (PCE 4) such as birds and small mammals that move *Cirsium* seed (SRS Technologies 2007, pp. 1-35). The vegetation in this unit includes central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, oak woodland, and intermittent streams (PCE 2) (Holland 1986, pp. 1-156; Keil 1997, pp. 1-12; CNDDB 2007, unpaginated; SRS Technologies 2007, pp. 1-35; Elvin 2007c, unpaginated; CNPS 2008, unpaginated). The soils in this unit are predominantly sandy (SRS Technologies 2003, pp. 1-1 to 9-14; USDA NRCS 2005, unpaginated) (PCE 3).

This unit is dominated by the prevailing, moderate to strong winds from the northwest that blow southeast across the San Antonio Dune Sheet and up San Antonio Creek (NOAA 2007, unpaginated; USDA NRCS 2008, unpaginated). These winds constitute an essential dispersal vector that helps disperse seeds from the San Antonio Dunes and the estuary at the mouth of San Antonio Creek to suitable habitat sites upstream along San Antonio Creek (PCE 4). The uninterrupted flow of water from the headwaters of San Antonio Creek and its tributaries down to its mouth is essential to facilitate the dispersal of *Cirsium loncholepis* seeds from and maintain connectivity between upstream populations such as Cañada de las Flores to other suitable mesic habitat sites downstream along San Antonio Creek and to mesic areas in the adjacent dune sheets (PCE 4).

While this unit was not occupied at the time of listing, Unit 4 is essential to the conservation of the species because it contains lands along San Antonio Creek that can function both as a core area and dispersal corridor for *Cirsium loncholepis*. Unit 4 is essential as a core area for *C. loncholepis* and would decrease fragmentation for the species. It contains many intermittent wetlands along the length of the creek and in the estuary at the mouth of the San Antonio Creek and is capable of supporting populations for long periods of time. These intermittent wetland sites (PCE 1) and the intervening habitat areas are also essential to maintain connectivity between more distant *C. loncholepis* populations (Higgins and Richardson 1999, pp. 464-475; Trakhtenbrot *et al.* 2005, pp. 173-181), such as those in the upper watershed of San Antonio Creek and those in the lower reaches of the creek and the adjacent San Antonio Terrace Dunes. Unit 4 is more easily managed for the species than many other areas in the historical distribution of the species because there are fewer pressures for commercial or agricultural development.

Unit 5: San Antonio Terrace (52 ac (21 ha))

Unit 5 is located in western Santa Barbara County, California. We determined that all lands in Unit 5 (7,334 ac (2,968 ha)) on San Antonio Terrace are essential to the conservation of *Cirsium loncholepis*. Unit 5 stretches along 4 mi (6.5 km) of the coast north from San Antonio Creek. This unit is southwest of the town of Casmalia. Unit 5 was not considered to be occupied at the time of listing and is currently considered to be unoccupied; it is within the historical distribution of the species. *Cirsium loncholepis* has been reported from wetlands in the San Antonio Terrace Dunes, but has not been officially documented with a herbarium specimen (CNDDB 2007, unpaginated; CCH 2008, unpaginated). We are excluding 7,282 ac (2,947 ha) of lands on VAFB owned by the DOD from this revised designation due to potential impacts to national security. Please see the section below entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) for an in-depth discussion of this exclusion.

Unit 5 is comprised of 52 ac (21 ha) of private lands that cut through VAFB. Unit 5 is located within the Santa Ynez Valley Dune Complex (Hunt 1993, pp. 5-72). The San Antonio Terrace Dune Sheet is the primary physiographic feature in Unit 5. San Antonio Creek is one of the two major drainages in the Santa Ynez Valley Dune Complex (Hunt 1993, pp. 5-72). This dune complex contains numerous mesic areas on the margins of dune swales, dune lakes, and marshes within the dynamic (changing) San Antonio Terrace Dune Sheet (PCEs 1 and 3). Unit 5 is dominated by strong winds from the northwest throughout the majority of the year that are a major factor in creating the dunes and shaping the terrain, such as the parallel ridges and the swales and other dune wetlands that are so important for *Cirsium loncholepis* (PCE 4) (Hendrickson 1990, pp. 1-25; NOAA 2007, unpaginated; USDA NRCS 2008, unpaginated).

The geomorphological processes that shaped and developed the terrain features in the Santa Ynez Valley Dune Complex are intact and continue to rejuvenate and maintain the dynamic dune and riparian features and processes of the constantly shifting mosaic of terrain, vegetation, and wetlands (PCEs 1, 2, 3, and 4). The vegetation in the dunes includes central dune scrub, coastal dune, coastal strand, coastal scrub, coastal freshwater marsh and fen, riparian scrub, chaparral, and oak woodland (PCE 2) (Cooper 1967, pp. 75-90; Holland 1986, pp. 1-156; SRS Technologies 2003, pp. 1-1 to 9-14; CNDDB 2007, unpaginated; SRS Technologies 2007, pp. 1-35; CNPS 2008, unpaginated). The soils throughout these dunes are dominated by sand (PCE 3) (Cooper 1967, pp. 75-90; Hunt 1993, pp. 5-72; USDA NRCS 2005, unpaginated). Dunes in the vicinity of VAFB support a wide diversity of flora and fauna including numerous insects and hummingbirds, many of which are pollinators for *Cirsium loncholepis* (Martin *et al.* 1951, pp. 92-277; Krombein *et al.* 1979, Vol. 2 pp. 1751-2209; SRS Technologies 2003, pp. 1-1 to 9-14; Blecha *et al.* 2007,

pp. 1-354; Keil 2008, unpaginated). The dunes also support numerous small mammal and bird species (SRS Technologies 2003, pp. 1-1 to 9-14; Blecha *et al.* 2007, pp. 1-354) that act as dispersal vectors for *C. loncholepis* seed (PCE 4). This unit contains large tracts of undeveloped land including dunes, wetlands, and upland areas utilized by the species and its pollinators (PCEs 1, 2, 3, and 4). The dynamic geomorphological processes, mosaic of habitats, and diversity of flora and fauna provide for and enhance the dispersal of genetic material of *Cirsium loncholepis* between and among the various wetlands within this dune complex and provide adjacent uplands for pollinators (PCEs 1, 2, 3, and 4).

The prevailing, strong wind patterns from the northwest, greater than 7.47 mph (12.02 kph) most of the time throughout the year, blow southeast across the San Antonio Terrace Dunes to areas up San Antonio Creek, across the Burton Mesa Dune Sheet, and along the Santa Ynez River. These winds are an essential dispersal vector that would help disperse *Cirsium loncholepis* seeds from the San Antonio Dunes to suitable habitat sites upstream along San Antonio Creek, in the Burton Mesa Dunes, and along the Santa Ynez River (PCE 4). The uninterrupted flow of these winds is essential to facilitate this dispersal and to maintain connectivity between *C. loncholepis* populations that might occur in these areas (PCEs 1 and 3) (SRS Technologies 2003, pp. 1-1 to 9-14; USDA NRCS 2008, unpaginated; NOAA 2007, unpaginated).

While this unit was not occupied at the time of listing, Unit 5 is essential as a core area for *C. loncholepis* in that the many mesic areas and intermittent wetlands within the dune system are capable of supporting *C. loncholepis* populations for long periods of time. The San Antonio Terrace Dune Sheet supports numerous dune wetlands and swales and is very similar in habitat, physical, and geological features to the Callender and Guadalupe Dune Sheets (Cooper 1967, pp. 75-90; Hunt 1993, pp. 5-72; Google Earth 2008, unpaginated). These wetland sites and the intervening upland habitat areas are essential to maintain connectivity within this dune system and between more distant *C. loncholepis* populations (Higgins and Richardson 1999, pp. 464-475; Trakhtenbrot *et al.* 2005, pp. 173-181), such as along San Antonio Creek and those in and along the Santa Ynez River or those between the Santa Maria Valley (specifically in the Santa Maria Valley Dune Complex and the Santa Maria River drainage system) and those downwind in the Santa Ynez Valley. Unit 5 is more easily managed for the species than many other areas in the historical distribution of the species because there are fewer pressures for commercial or agricultural development.

Unit 6: Santa Ynez River (210 ac (85 ha))

Unit 6 is located in the western portion of Santa Barbara County, California. We determined that all lands in Unit 6 (2,482 ac (1,005 ha)), which stretch along the lower 4 mi (6 km) of the Santa Ynez River, are essential to the conservation of *Cirsium loncholepis*. Unit 6 is west of Lompoc and east of Surf. Unit 6 was not considered to be occupied at the time of listing, and is currently considered to be unoccupied. Unit 6 is within the historical distribution of the species. We are excluding 2,272 ac (919 ha) of lands on VAFB owned by the DOD from this revised designation due to potential impacts to national security and are designating three subunits in the unit, two at the mouth of the Santa Ynez River and one upriver, closer to Lompoc. Please see the section below entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) for an in-depth discussion of this exclusion.

Unit 6 is comprised of three subunits totaling approximately 210 ac (85 ha) of Federal, County, and private property (acreages do not add up due to rounding). Subunit 6A (Ocean Park) is near the mouth of the river and consists of approximately 35 ac (14 ha) of County lands at Ocean Park and approximately 12 ac (6 ha) of private lands along the railroad tracks. The lands in Subunit 6A consist of the river and estuary, marsh and riparian areas on both banks of the Santa Ynez River, the flood plain on both sides with marsh, riparian, mesic, and upland scrub habitats. Subunit 6B (Surf) consists of approximately 32 ac (13 ha) of private lands along the railroad tracks that run parallel with Highway 246. The lands in Subunit 6B consist of marshy areas on the south side of the Santa Ynez River with marsh, riparian, mesic, and upland scrub habitats to the adjacent slopes. Subunit 6C (Lompoc) is approximately 4 mi (6 km) from the Pacific Ocean and consists of approximately 132 ac (53 ha) of Federal (non-DOD) lands adjacent to VAFB. The lands in Subunit 6C consist of mesic areas in the floodplain on the south side of the Santa Ynez River with marsh, riparian, mesic, and upland scrub habitats, some of which are periodically used for agriculture. The Santa Ynez River is one of the two major drainages in the Santa Ynez Valley Dune Complex (Hunt 1993, pp. 5-72). The Santa Ynez River is the geological feature that separates the Burton Mesa Dune Sheet and the Lompoc Terrace Dune Sheet. This drainage and the adjacent uplands contain numerous mesic areas on the margins of the river and its floodplain; in freshwater marshes; in intermittent streams that are tributaries; and in freshwater seeps in adjacent grasslands, coastal scrub, and chaparral (PCEs 1, 2, and 3) (CNDDB 2007, unpaginated; Elvin 2008, unpaginated; Google Earth 2008, unpaginated). The Santa Ynez River is a dynamic riparian system similar to the Santa Maria River with historical records of high flows and floods that can change the banks of the river creating new, unvegetated areas such as those that occur along the Santa Maria River after high flows.

The geomorphological processes (fluvial and aeolian) that shaped and developed the terrain features in the Santa Ynez Valley are intact and continue to affect the dynamic dune and riparian features and processes and their associated habitats in this unit (PCEs 1 and 4). The lower 4 mi (6 km) of the Santa Ynez River remain mostly intact with some adjacent agriculture; adjacent riparian scrub vegetation and sandy alluvial soils (PCE 2); and dynamic fluvial geomorphological processes, which allow it to operate as a dynamic riparian system with uninterrupted water flows (PCEs 1 and 4). Additionally, areas to the north and south of the river contain large blocks of intact habitat (PCEs 1 and 4), including suitable upland habitat areas between the intermittent streams and freshwater seeps (PCE 1) that provide habitat for pollinators and other dispersal vectors (PCE 4), such as birds and small mammals that move *Cirsium* seed. The vegetation in this unit includes central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, and intermittent streams (PCEs 1 and 2) (Cooper 1967, pp. 75-90; Holland 1986, pp. 1-156; Hunt 1993, pp. 5-72; SRS Technologies 2003, pp. 1-1 to 9-14; CNDDB 2007, unpaginated; Elvin 2007c, unpaginated; SRS Technologies 2007, pp. 1-35; CNPS 2008, unpaginated; Elvin 2008, unpaginated). The soils in this unit are predominantly sandy (SRS Technologies 2003, pp. 1-1 to 9-14; SRS Technologies 2007, pp. 1-35; Elvin 2007c, unpaginated; Elvin 2008, unpaginated; USDA NRCS 2008, unpaginated) (PCE 3).

In Unit 6, as in Units 4 and 5, the prevailing, strong wind patterns from the northwest, greater than 7.47 mph

(12.02 kph) most of the time throughout the year, blow southeast across the San Antonio Terrace Dunes to areas up San Antonio Creek, across the Burton Mesa Dune Sheet, and along the Santa Ynez River. These winds are an essential dispersal vector that would help disperse *Cirsium loncholepis* seeds from the San Antonio Dunes to suitable habitat sites upstream along San Antonio Creek, in the Burton Mesa Dunes, and along the Santa Ynez River (PCE 4). The uninterrupted flow of these winds is essential to facilitate this dispersal and to maintain connectivity between *C. loncholepis* populations that might occur in these areas (PCEs 1 and 4) (SRS Technologies 2003, pp. 1-1 to 9-14; NOAA 2007, unpaginated; USDA NRCS 2008, unpaginated). These strong winds also blow from the lower portion of the Santa Ynez River along the north base of the Santa Ynez Mountains, more or less upstream along the Santa Ynez River and to the numerous seeps along the north base of the Santa Ynez Mountains. These winds are an essential dispersal vector that would help move any *Cirsium loncholepis* seeds from San Antonio Terrace Dunes to the Santa Ynez River (and its ancillary, adjacent wetlands) and from the lower reaches of the Santa Ynez River to the pocket wetlands along the river and upstream. These uninterrupted winds are essential to maintain connectivity between population areas in the Santa Ynez Valley (PCEs 1 and 4) (SRS Technologies 2003, pp. 1-1 to 9-14; NOAA 2007, unpaginated; USDA NRCS 2008, unpaginated). The Santa Ynez River also acts as a dispersal vector by carrying seed from upstream plants down to the mouth (PCE 1 and 4). The uninterrupted flow of water from up-river along the Santa Ynez River to the wetlands at its mouth is essential to maintain the connectivity between occurrences in Unit 5 (PCE 4). The lower reaches of the Santa Ynez River contain numerous pocket wetlands, intermittent streams/tributaries, marshes, and estuaries. Several hillside seeps also occur in this stretch of the river (PCE 1).

While this unit was not occupied at the time of listing, Unit 6 is essential to the conservation of the species as a potential core area for *C. loncholepis* in that the many intermittent wetlands and freshwater seeps within the dynamic river system are capable of supporting *C. loncholepis* populations for long periods of time. The wetlands and the intervening upland habitat areas in Unit 6 are essential to maintain connectivity within and throughout this riparian system as a core area for *C. loncholepis*. Unit 6 is more easily managed for the species than many other areas in the historical distribution of the species because a large part of this unit has fewer pressures for commercial or agricultural development.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service, 378 F. 3d 1059 (9th Cir 2004) and Sierra Club v. U.S. Fish and Wildlife Service *et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, 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 to serve its intended conservation role for the species.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat;

or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, Federal agencies may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Cirsium loncholepis* or its designated critical habitat will require consultation under section 7(a)(2) of the Act. Activities on State, Tribal, local or private lands requiring a Federal permit such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions that may be subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve its intended conservation role for the species. Activities that may destroy

or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Cirsium loncholepis*. Generally, the conservation role of *Cirsium loncholepis* critical habitat units is to support suitable habitat that allows for natural processes that can maintain or support occurrences of the species in viable occurrences (or subpopulations), core populations, and corridors, which support temporal populations that maintain connectivity between 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, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *Cirsium loncholepis* include, but are not limited to (please see ''Special Management Considerations or Protection'' section for a more detailed discussion on the impacts of these actions to the listed species):

(1) Actions that would degrade or destroy native maritime chaparral, dune, and oak woodland communities, including but not limited to, livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative plants, and heavy recreational use;

(2) Actions that would appreciably diminish habitat value or quality through indirect effects (e.g., edge effects, invasion of nonnative plants or animals, or fragmentation), such as livestock grazing; clearing vegetation; discing; introducing or encouraging the spread of non-native plants; heavy recreational use; fragmentation of habitat blocks; the creation of barriers or dams; channelizing rivers, creeks, or drainages; or the introduction or creation of barriers or wind-blocks such as large manmade structures, developments, tree rows, or windbreaks.

(3) Actions that would appreciably interrupt or alter water flows in the Santa Maria River, Orcutt Creek, San Antonio Creek, or Santa Ynez River (such as channelization or confinement of the water flows by barriers or dams or converting them from soft bottoms and sides to a lined, channelized drainage).

(4) Actions that would appreciably interrupt or alter winds across the Santa Maria Valley and Santa Ynez Dune Complexes and along the Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River watershed areas such that the natural aeolian geomorphology in the Santa Maria Dune Complex and Santa Ynez Dune Complex, and along the Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River drainages, would be blocked or altered by barriers or wind-blocks such as large manmade structures, developments, tree rows, or windbreaks.

These activities could result in reduction or degradation of habitat necessary for the growth and reproduction of this plant and its habitat, including reduction or preclusion of necessary movement of seeds within and between occurrences and core populations or between core habitat areas, and directly or cumulatively causing adverse affects to *Cirsium loncholepis* and its life cycle.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

DOD Lands at VAFB are not discussed in this section because VAFB does not have a completed and signed INRMP. There are no DOD lands with a completed INRMP within this final revised critical habitat designation. Therefore, there are no lands exempted from this revised designation under section 4(a)(3) of the Act. Please see the section entitled Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD) below for further discussion of exclusion of lands at VAFB.

Exclusions under Section 4(b)(2) of the Act

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific and commercial data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial 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 legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In the following sections, we address a number of general issues that are relevant to our analysis under section 4(b)(2) of the Act.

Under section 4(b)(2) of the Act, we must consider the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or

whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider the economic impacts, environmental impacts, and any social impacts that might occur because of the designation.

In considering the benefits of including in a designation, lands that are covered by a proposed or current HCP or other management plan, we evaluate a number of factors to help us determine if the plan provides equivalent or greater conservation benefit than would likely result from consultation on a designation:

(1) Whether the plan is complete and provides protection from destruction or adverse modification;

(2) Whether there is a reasonable expectation the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We balance the benefits of inclusion against the benefits of exclusion by considering the benefits of preserving partnerships and encouraging development of additional HCPs and other conservation plans in the future.

The proposed revised designation did not include any lands covered by a completed HCP for *Cirsium loncholepis*, or any Tribal lands or trust resources. Nor have any HCPs or conservation plans covering this species in these areas been approved since the proposed revised designation was issued. Therefore, we do not anticipate any impact to Tribal lands or habitat conservation plans from this critical habitat designation. Based on the best available information, we believe that all of the units contain the physical and biological features essential to the conservation of *C. loncholepis*. In addition, as discussed below under the Economic Analysis section of this rule, our economic analysis indicates an overall low economic cost resulting from the revised designation. We have not identified any area for which the benefits of exclusion outweigh the benefits of inclusion based on management plans or economic impacts; therefore, the Secretary did not exert his discretion and exclude any areas from this revised designation of critical habitat for *C. loncholepis* based on management plans or economic impacts. Because the ESMP for *Cirsium loncholepis* has not been completed, we did not consider DOD lands for exclusion under Section 4(b)(2) as discussed above.

Relationship of Critical Habitat to Lands Managed by the California Department of Parks and Recreation (CDPR)

The CDPR requested that we exclude 820 acres (332 hectares) of lands in and around the OHV area within Oceano Dunes State Vehicular Recreation Area (ODSVRA) under section 4(b)(2) of the Act for the following reasons:

(1) There is a long-standing history of OHV use of Oceano Dunes;

(2) The State law that established ODSVRA mandated the area be used for OHV recreation;

(3) Critical habitat is not needed because CDPR has a rare plant protection program in place to manage populations within ODSVRA and if *Cirsium loncholepis* is found there in the future, those plants would be protected as part of the rare plant protection program; and

(4) Economic impacts need to be considered, and they outweigh the benefits of inclusion of this area.

We analyzed all lands within ODSVRA that were proposed as critical habitat in the proposed revised critical habitat designation. We determined that approximately 639 ac (259 ha) of the 714 ac (289 ha) that were proposed within the OHV area do not contain the PCEs in the appropriate quantity and spatial arrangement that are essential for the conservation of the species. Because these areas do not meet the definition of critical habitat, these approximately 639 ac (259 ha) are not designated as critical habitat. We determined that approximately 75 ac (30 ha) within the OHV area are essential for the conservation of the species. As a consequence, these areas are included in the final designation.

State lands may be excluded from critical habitat designation based on section 4(b)(2) of the Act. An area may be excluded from critical habitat when we determine, following an analysis of relevant impacts, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

(1) Benefits of Inclusion

The benefits of inclusion are high. Because areas within ODSVRA currently contain suitable habitat, are adjacent to currently occupied sites, and support the PCEs, are fenced off from ODSVRA activities, we determined that the subject approximately 75 ac (30 ha) are essential to the conservation of *Cirsium loncholepis*. The CDPR has proposed to address areas of proposed critical habitat for *C. loncholepis* through the development of a habitat conservation plan under section 10(a)(1)(B) of the Act and through a rare plant protection program to manage populations. The draft HCP is not complete and therefore does not meet the three criteria identified above. The rare plant protection program does not meet the three criteria because it proposes to manage populations, but not the habitat for the plants and therefore does not provide protection from destruction or adverse modification. Critical habitat would provide benefits to *C. loncholepis* because it would allow for the analysis of projects with a federal nexus that might adversely affect suitable habitat if the plant is not present. Peer reviewers concur that areas that are not occupied are important for the conservation and recovery of fugitive species such as *C. loncholepis*. Therefore, designating critical habitat in this area would provide additional Federal regulatory benefits to *C. loncholepis* that would not occur in areas where plants were not observed. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify these potential benefits at present.

Another possible benefit of a critical habitat designation in general is education of landowners and the public regarding the potential value of these areas to the conservation of *Cirsium loncholepis*. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. In this case, the primary land owner is CDPR. We believe that this educational benefit has largely been achieved because we have been coordinating for many years with CDPR on its land management programs. Based on these coordination efforts, we believe that CDPR is aware of the conservation needs of *C. loncholepis*, and we believe that some of the education benefits that might arise from a critical habitat designation at ODSVRA have already been generated. Therefore, the benefits of inclusion of CDPR lands at ODSVRA as critical habitat for *C. loncholepis* are high because the approximately 75 ac (30 ha) are essential to the conservation of the species and there are additional benefits through the Federal regulatory process

and some potential educational benefits to designating critical habitat on CDPR lands.

(2) Benefits of Exclusion

The benefits of exclusion are moderate. The CDPR has commented that the designation of critical habitat at ODSVRA would result in economic impacts to the CDPR, significant delays to visitor serving and resource management efforts that outweigh the benefits of inclusion of this area (Zilke 2008). CDPR operates the ODSVRA, part of which contains an OHV use area that is one of the few areas in California where the public is allowed to legally drive and camp on a sandy beach (Zilke 2008). The CDPR claims that it needs the full space of the ODSVRA in order to complete its State mandate to operate as an OHV recreation area. It claims that the designation of critical habitat would impact its ability to use its lands for OHV recreation and could cost them additional time and monies to manage their resources (Zilke 2008).

Excluding the CDPR lands at ODSVRA from the critical habitat designation would permit the CDPR and OHV activities to proceed unaffected. Designating critical habitat on portions of ODSVRA (in the OHV area) would likely cause some additional costs and time delays for CDPR at ODSVRA in the form of surveys, reports, and consultations. The Service believes that these would be minimal.

(3) Benefits of Inclusion Outweigh the Benefits of Exclusion

Because the habitat identified on ODSVRA for *Cirsium loncholepis* does support the primary constituent elements and is directly adjacent to one of the last remaining populations, it was proposed for designation as critical habitat. We determined that 639 ac (259 ha) of the OHV riding area proposed for critical habitat do not contain the PCEs in the appropriate quantity and spatial arrangement that are essential for the conservation of the species and therefore are not essential to the conservation of the species. We determined that 75 ac (30 ha) within the OHV riding area do contain PCEs and are essential for the conservation of the species. The CDPR has provided information indicating that critical habitat for *Cirsium loncholepis* would present potential impacts to their operations as an OHV recreation area and that they plan to provide management for *C. loncholepis* plants that occur in this area. Accordingly, we have determined that the benefits of inclusion of the subject 75 ac (30 ha) of critical habitat at ODSVRA outweigh the benefits of exclusion of these areas at ODSVRA and therefore the Secretary is not exercising his discretion to exclude these lands under section 4(b)(2) of the Act.

Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD)

We have excluded all DOD lands within the boundaries of Vandenberg Air Force Base (VAFB) under section 4(b)(2) of the Act based on potential impacts to national security. We are excluding a total of 13,705 ac (5,546 ha) on VAFB: 4,151 ac (1,680 ha) from Unit 4; 7,282 ac (2,947 ha) from Unit 5; and 2,272 ac (919 ha) from Unit 6. The DOD requested that all VAFB lands be excluded based on potential impacts to national security because the designation of critical habitat would impact the DOD mission by limiting the amount of natural infrastructure that is available for mission execution and military training critical to national security.

Military lands may be excluded from critical habitat designation based on section 4(b)(2) of the Act. An area may be excluded from critical habitat when we determine, following an analysis of relevant impacts including the impact to national security, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. The DOD requested the exclusion of all lands at VAFB under section 4(b)(2) of the Act based on potential impacts to national security.

(1) Benefits of Inclusion

The benefits of inclusion are high. Because areas on VAFB were historically occupied, currently contain suitable habitat, and support the PCEs, DOD has proposed to address areas of proposed critical habitat for *Cirsium loncholepis* through interagency conference procedures under section 7(a)(4) of the Act in the pending basewide programmatic consultation for VAFB. This consultation is in the process of evaluating the various programs of activities implemented on VAFB and measures proposed by DOD to avoid and minimize adverse effects to *C. loncholepis* habitat. Additionally, *C. loncholepis* is currently included in the VAFB INRMP being developed by DOD, which also incorporates conservation and management activities. Critical habitat would provide benefits to *C. loncholepis* because it would allow for the analysis of projects that might adversely affect suitable habitat even when the plant is not present. These unoccupied areas are an important part of the life cycle for *C. loncholepis*. Peer reviewers concur that these unoccupied areas are important for the conservation and recovery of *C. loncholepis*. Therefore, designating critical habitat in this area would provide additional Federal regulatory benefits to *C. loncholepis* that would not occur otherwise. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify these potential benefits at present.

Another possible benefit of a critical habitat designation in general is education of landowners and the public regarding the potential conservation value of these areas to the conservation of *Cirsium loncholepis*. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. In this case the primary land owner is DOD, and we believe that this educational benefit has largely been achieved because we have been coordinating for many years with DOD on its land management programs and its training activities. Based on these coordination efforts, we believe that DOD is very aware of the conservation needs of *C. loncholepis*. For example, DOD sponsored surveys for *C. loncholepis* in 2008 at VAFB. Additionally, DOD is including management activities for *C. loncholepis* in the programmatic consultation and in the INRMP under development for VAFB. Therefore, we believe that some of the education benefits that might arise from a critical habitat designation at VAFB have already been generated. Therefore, the benefits of inclusion of DOD lands at VAFB as critical habitat for *C. loncholepis* are high due to benefits through the Federal regulatory process and some potential educational benefits to designating critical habitat on VAFB lands.

(2) Benefits of Exclusion

The benefits of exclusion are high. The DOD has commented that the designation of critical habitat on VAFB would result in substantial economic and military readiness impacts (Linn 2008; Kephart 2009a, 2009b). VAFB operates as a missile test base and aerospace center, supports west coast launch activities for the United States Air Force, DOD, National Aeronautics and Space Administration, and commercial contractors, and is headquarters for the 30th Space Wing, which operates the Base and the

Western Test Range (Linn 2008, Att. 1). VAFB provides combat capability by providing Air and Space Superiority, Global Attack, Rapid Global Mobility, Precision Engagement, Information Superiority, and Agile Combat Support to ensure space- and combat-ready Airmen, and provides the only U.S. capability to launch military and commercial satellites. It also conducts an array of telemetry and tracking systems on the Western Test Range, and is supporting development of the Ground-Based Midcourse Defense Element of the Ballistic Missile Defense System (Kephart 2009a, p. 2; Kephart 2009b, p. 1). Kephart (2009b, p1) states: ''The base also conducts intercontinental ballistic missile testing and operates the Western Test Range. Aerospace operations in the Range are accommodated at the VAFB flightline, for fixed-wing and rotary wing aircraft operations, and through the extensive army of telemetry and tracking systems that constitute the Range hardware. Several tenant units including other DOD agencies operate from base property or maintain assets here. One example is the Missile Defense Agency's Joint Program Office supporting development of the Ground-Based Midcourse Defense element of the Ballistic Missile Defense System (BMDS). The BMDS is a critical national security concept to provide an effective defense for the United States, its deployed forces, and its friends and allies from limited missile attack, during all segments of an attacking missile's flight.'' Additionally, VAFB states that the Conventional Strike Missile program has been planned for a location in the vicinity of proposed La Graciosa Thistle critical habitat and that while the base provides large buffers around launch facilities, communications and utility corridors exist throughout the base, including through otherwise undeveloped areas. VAFB states that designation of critical habitat could result in closure of areas needed for development, a reduction in the availability of operational land required for present and future needs, and project delays due to administrative requirements. These infrastructure needs are expanding as new missions, such as Missile Defense Agency programs, establish operations at VAFB (Kephart 2009b, pp. 2-3). VAFB/DOD states that it needs the nearly 100,000 ac (40,469 ha) of operational area at VAFB, consisting of ''extensive tracts of undeveloped and encroachment free property essential for a launch safety buffer'' in order to complete its national security mission to fulfill the above-named functions (Kephart 2009a, pp. 2). It claims that the designation of critical habitat would impact its ability to use its lands for military training because it would limit the amount of natural infrastructure (e.g., land, water, and air resources) necessary to support missile operations and essential maintenance activities and could delay short-notice mission critical activities (Linn 2008).

Excluding the DOD lands on VAFB from the critical habitat designation would permit these mission critical activities to proceed, thus allowing VAFB to meet its national security mission. A critical habitat designation would likely cause some additional costs and time delays for DOD at VAFB in the form of surveys, reports, and consultations. The Service defers to DOD's expertise in identifying specific impacts to military readiness or national security.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Because the habitat identified on VAFB for *Cirsium loncholepis* does provide the primary constituent elements, it was proposed for designation as critical habitat. The military has provided substantial information indicating that critical habitat for *Cirsium loncholepis* presented serious potential impacts to national security and the disruption of its critical national defense mission. Accordingly, we have determined that the benefits of exclusion of critical habitat on VAFB outweigh the benefits of inclusion of critical habitat on VAFB, The Secretary is exercising his discretion to exclude these lands under section 4(b)(2) of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

Exclusion of 13,705 ac (5,546 ha) from VAFB of this revised critical habitat designation will not result in the extinction of the species. The jeopardy standard of section 7(a)(2) of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct. The protections afforded *C. loncholepis* under the jeopardy standard of section 7 of the Act will remain in place for the areas excluded from revised critical habitat if *C. loncholepis* is determined to occur on the base.

Economic Analysis

Following the publication of the proposed revised designation of critical habitat, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft economic analysis (DEA; dated January 16, 2009) was made available for public review and comment from March 10, 2009, to April 9, 2009 (74 FR 10211). Substantive comments and information received on the DEA are summarized above in the **Public Comment** section and are incorporated into the final analysis, as appropriate. Taking any relevant new information into consideration, the Service completed an FEA (dated July 27, 2009) of the designation that updates the DEA by removing impacts that were not considered probable or likely to occur, and by adding an estimate of the costs associated solely with the designations of critical habitat for *Cirsium loncholepis* (incremental impacts).

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Cirsium loncholepis*. 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. The economic analysis considers the economic efficiency effects that may result from the designation. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). It also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The economic analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, 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. Finally, the economic analysis looks retrospectively at costs that have been incurred since the date we listed *Cirsium loncholepis* as endangered (March 20, 2000 (65 FR 14888), and considers those costs that may occur in the years following the revised designation of critical habitat, with the

timeframes for this analysis varying by activity.

The economic analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, 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 examines activities taking place both within and adjacent to the designation. It 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. Accordingly, the analysis bases estimates on activities that are likely to occur within a 20–year timeframe, from when the proposed rule became available to the public (August 6, 2008, 73 FR 45806). The 20–year timeframe was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects are based become increasingly speculative.

The vast majority of potential incremental economic impacts attributed to the revised critical habitat designation, if it was finalized as proposed, would be expected to be related to recreation (over 99 percent); the remaining incremental impacts are related to development and public lands management (less than 1 percent) The FEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the 20 years after the 2008 proposal (to 2028) to range from $405 thousand ($26.5 thousand annualized) to $55.6 million ($3.6 million annualized) in present value terms using a 3 percent discount rate, and from $355 thousand ($31.3 thousand annualized) to $39.6 million ($3.5 million annualized) in present value terms using a 7 percent discount rate (including areas considered for exclusion under section 4(b)(2) of the Act).

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands within the geographical area occupied by the species at the time of listing on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed or protected, could provide for the survival and recovery of the species.

The identification of areas that contain features essential to the conservation of the species that can, if managed or protected, provide for the recovery of a species, is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical and biological features essential to the conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential for the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not be included in the areas the Service identifies as meeting the definition of critical habitat.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a consultation is only required where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential for the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require private property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to the primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in a destruction or adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take

place on the lands included in the designation. Even in cases where consultation is initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat.

Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat, and therefore, implement recovery actions. We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through implementing HCPs under section 10 of the Act or other habitat management plans. The conservation achieved through such plans is typically greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat.

Management plans 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(a)(2) consultations only commit Federal agencies to preventing adverse modification of 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 action. Thus, implementation of an HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Cirsium loncholepis*. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Relationships to Conservation Partnerships on Non-federal Lands

Currently, there are no Habitat Conservation Plans on non-federal lands that include *Cirsium loncholepis* as a managed species.

Required Determinations

Regulatory Planning and Review–Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under E.O. 12866. OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our FEA of the designation, we provide our analysis for determining whether the designation of critical habitat for *Cirsium loncholepis* will result in a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the revised designation of critical habitat for *Cirsium loncholepis* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we considered whether the activities of these entities may entail Federal involvement. Revised critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, or authorized by Federal agencies.

Once this revised critical habitat designation takes effect, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In order to determine whether it is appropriate for our agency to certify that this rule will not have a significant economic impact on a substantial number of small entities, we considered in the FEA the potential impacts related to activity categories including Vandenberg Air Force Base (VAFB), residential/commercial development, oil and gas, public lands management, agriculture/ranching, and recreation. Of these, impacts of conservation activities are not anticipated to affect small entities for the following reasons: VAFB is not considered a small entity, and furthermore no incremental impacts to

VAFB are anticipated; potential impact to residential/commercial developers is anticipated to be small; no incremental impacts to oil and gas industry are anticipated; and public lands management agencies are not considered small entities. Small entities may be affected in the agriculture/ranching sector and in recreation. Within the agriculture/ranching sector, small entities make up 55 percent of the entities that may be affected. Within the recreation sector, small entities represent 85 percent of the entities that serve OHV recreation that may be affected. Please refer to our final economic analysis (Appendix A) of the proposed revision of critical habitat for a more detailed discussion of potential economic impacts.

In summary, we considered whether this final rule to revise critical habitat would result in a significant economic effect on a substantial number of small entities. For the above reasons and based on currently available information, we certify that the revised designation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use–Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This revision to critical habitat for *Cirsium loncholepis* is not considered a significant regulatory action under E.O. 12866. OMB has provided guidance for implementing this Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The economic analysis finds that one of these criteria is relevant to this analysis, specifically, an increase in the cost of energy production in excess of one percent. However, since oil and gas production in the area is related to the reactivation of existing wells, as opposed to new oil and gas development, based on information in the economic analysis (Appendix A), we assume that there will be no increase in the cost of energy production due to critical habitat. As such, the final designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)-(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, 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 does critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would 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. As discussed in the economic analysis, anticipated future impacts in areas designated as critical habitat may be borne by the Federal Government (U.S. Fish and Wildlife Service at Guadalupe-Nipomo National Wildlife Refuge) and by the County of Santa Barbara (Rancho Guadalupe County Park). By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. The County of Santa Barbara is also not considered to be a small entity because it services a population exceeding the criteria for a ''small entity.'' As such, a Small Government Agency Plan is not required.

Takings–Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *Cirsium loncholepis* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this final revised designation of critical habitat for *C. loncholepis* does not pose significant takings implications for lands within or affected by the designation.

Federalism–Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce

policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. During the public comment periods, we contacted appropriate State and local agencies and jurisdictions, and invited them to comment on the proposed revised critical habitat designation for *Cirsium loncholepis*. In total, we received one comment letter during these comment periods from a State agency (California State Parks) (see ''Summary of Comments and Recommendations'' section). The designation of revised critical habitat in areas currently occupied by *C. loncholepis* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have a slight incremental impact on State and local governments and their activities. The designations 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 are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform–Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of *Cirsium loncholepis*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995. 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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no Tribal lands occupied by *Cirsium loncholepis* at the time of listing or currently occupied that contain the features essential for the conservation of the species, and no Tribal lands that are in unoccupied areas that are essential for the conservation of the species. Therefore, in this revised final rule, We have not designated critical habitat for *C. loncholepis* on Tribal lands.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the United States Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 516 U.S. 1042 (1996)).

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/ventura/*.

Author(s)

The primary authors of this rulemaking are staff members of the Ventura Fish and Wildlife Office, Ventura, California.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.96(a) by revising the entry for ''Family Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)

(1) Critical habitat units are depicted for San Luis Obispo and Santa Barbara Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Cirsium loncholepis* are:

(i) Mesic areas associated with:

(A) Margins of dune swales, dune lakes, marshes, and estuaries that are associated with dynamic (changing) dune systems including the Santa Maria Valley Dune Complex and Santa Ynez Valley Dune Complex;

(B) Margins of dynamic riparian systems including the Santa Maria and Santa Ynez Rivers and Orcutt and San Antonio Creeks; and

(C) Freshwater seeps and intermittent streams found in other habitats, including grassland, meadow, coastal scrub, and oak woodland. These areas provide space needed for individual and population growth including sites for germination, reproduction, seed dispersal, seed bank, and pollination;

(ii) Associated plant communities including: Central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), oak woodland, intermittent streams, and other wetland communities, generally in association with the following species: *Juncus* spp. (rush), *Scirpus* spp. (tule), *Salix* spp. (willow), *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), *Baccharis pilularis* (coyote

brush), and *B. douglasii* (Douglas' baccharis);

(iii) Soils with a sandy component including but not limited to dune sands, Oceano sands, Camarillo sandy loams, riverwash, and sandy alluvial soils; and

(iv) Features that allow dispersal and connectivity between populations, particularly:

(A) Natural riparian drainages in Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River that are not channelized or confined by barriers or dams, such that they have soft bottoms and sides and a natural flood plain (allowing uninterrupted water flows); and

(B) Natural aeolian geomorphology in the Santa Maria Dune Complex and Santa Ynez Dune Complex, and along the Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River drainages that is not confined by barriers or wind-blocks such as large manmade structures, tree rows, or wind-breaks (allowing uninterrupted winds across these areas).

(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 within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created on base maps using aerial imagery from the National Agricultural Imagery Program (aerial imagery captured June 2005). Data were projected to Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983.

(5) *Note*: Index map of *Cirsium loncholepis* critical habitat follows:

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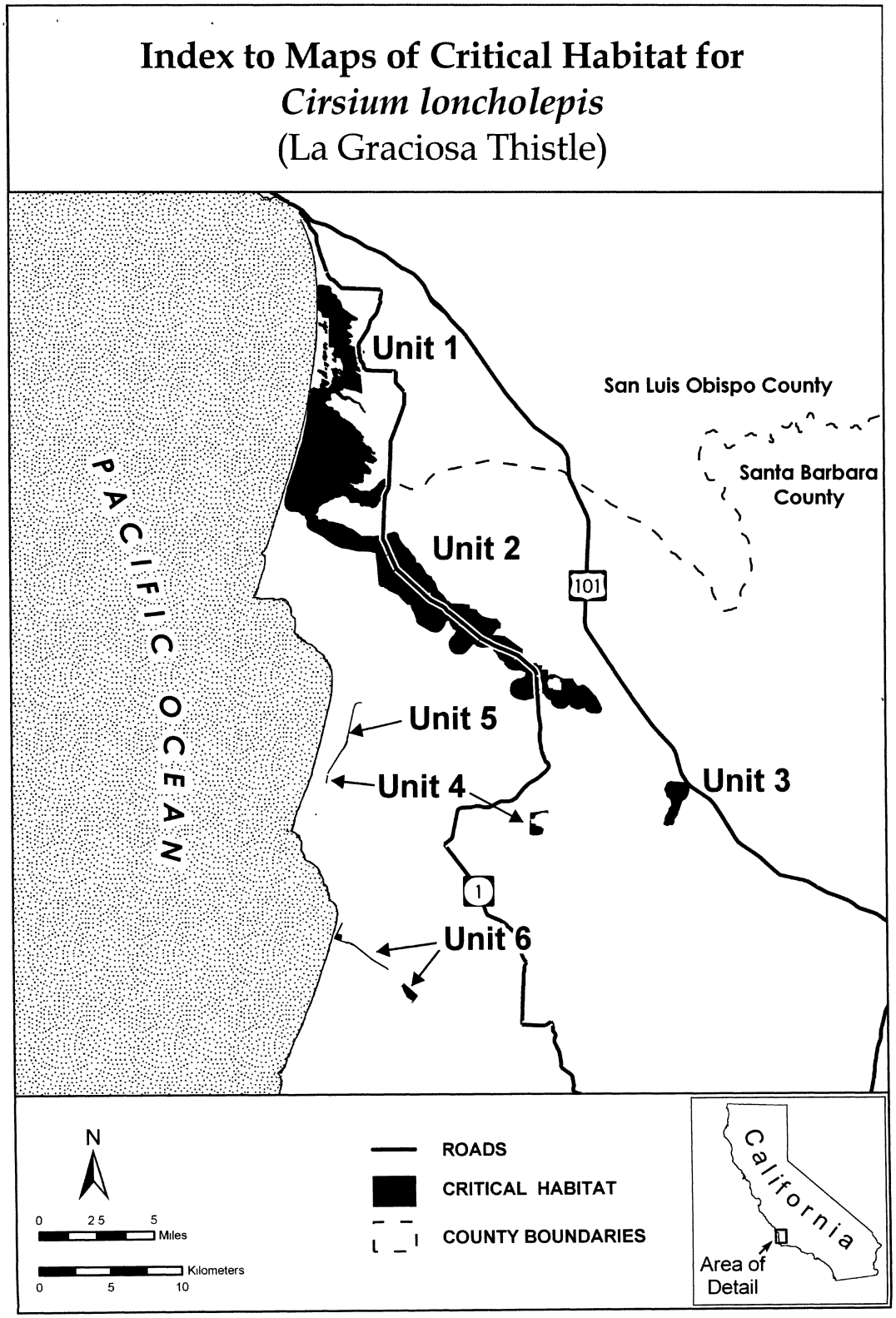

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(6) Unit 1: Callender-Guadalupe Dunes. San Luis Obispo County, California.

From USGS 1:24,000 scale quadrangle maps Oceano, Point Sal, and Guadalupe.

(i) Subunit 1A, Callender-Guadalupe.

(A) Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E,N): 716558.580, 3886615.727; 716593.461, 3886608.531;716628.686, 3886609.074; 716693.321, 3886620.751; 716746.394, 3886619.168; 716810.817, 3886600.840; 716896.128, 3886564.822; 716927.810, 3886539.634; 716981.866, 3886475.432; 716997.742, 3886438.750; 716997.185, 3886411.967; 716977.933, 3886381.454; 716935.087, 3886346.255; 716925.742, 3886324.929; 716926.061, 3886308.681; 716949.343, 3886276.028; 717000.667, 3886235.718; 717033.169, 3886203.391; 717046.547, 3886178.771; 717057.601, 3886138.563; 717075.230, 3886109.665; 717095.075, 3886095.165; 717123.770, 3886086.134; 717196.122, 3886089.887; 717236.765, 3886083.749; 717292.894, 3886065.191; 717328.620, 3886044.481; 717371.983, 3885996.222; 717397.064, 3885949.513; 717408.640, 3885904.632; 717418.497, 3885823.007; 717437.655, 3885778.233; 717477.278, 3885747.347; 717570.600, 3885709.648; 717619.444, 3885669.117; 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(B) Excluding land bounded by the following UTM NAD83 coordinates (E,N): 717937.807, 3880783.475; 717849.041, 3880821.504; 717848.938, 3880817.720; 717849.392, 3880817.650; 717845.549, 3880807.313; 717843.593,

3880800.027; 717841.269, 3880793.548; 717837.501, 3880785.669; 717836.131, 3880783.911; 717828.857, 3880776.863; 717817.989, 3880765.903; 717812.187, 3880758.047; 717776.455, 3880744.115; 717946.560, 3880643.422; 717990.327, 3880695.942; thence returning to 717937.807, 3880783.475.

(C) Excluding land bounded by the following UTM NAD83 coordinates (E,N): 717791.575, 3880459.554; 717799.332, 3880445.386; 717793.518, 3880418.908; 717877.719, 3880381.762; 717877.788, 3880381.731; 717878.022, 3880381.614; 717878.247, 3880381.481; 717878.464, 3880381.333; 717878.670, 3880381.172; 717931.589, 3880343.026; 717999.080, 3880459.602; 717946.560, 3880564.642; 717687.919, 3880630.938; 717691.226, 3880626.729; 717694.265, 3880622.551; 717699.251, 3880616.956; 717706.283, 3880606.405; 717710.417, 3880598.353; 717714.342, 3880595.747; 717713.908, 3880594.512; 717712.625, 3880591.920; 717715.053, 3880585.202; 717716.723, 3880581.192; 717718.867, 3880576.150; 717721.160, 3880570.917; 717723.858, 3880566.063; 717724.433, 3880561.206; 717728.941, 3880560.990; 717731.725, 3880540.438; 717732.513, 3880535.099; 717733.828, 3880528.387; 717734.669, 3880522.890; 717736.483, 3880519.997; 717735.778, 3880516.228; 717736.401, 3880511.843; 717741.119, 3880509.748; 717750.271, 3880489.562, thence returning to 717791.575, 3880459.554.

(ii) Subunit 1B, Moymell. Land bounded by the following UTM NAD83 coordinates (E,N): 716675.012, 3884158.382; 716676.309, 3884157.597; 716678.024, 3884158.333; 716678.226, 3884158.413; 716678.474, 3884158.495; 716678.728, 3884158.561; 716678.985, 3884158.610; 716679.245, 3884158.642; 716679.506, 3884158.656; 716679.768, 3884158.654; 716680.029, 3884158.635; 716680.288, 3884158.598; 716680.545, 3884158.545; 716680.797, 3884158.475; 716681.044, 3884158.389; 716681.285, 3884158.286; 716681.519, 3884158.168; 716681.649, 3884158.094; 716684.912, 3884156.151; 716685.007, 3884156.092; 716685.224, 3884155.945; 716685.430, 3884155.784; 716685.625, 3884155.610; 716685.809, 3884155.423; 716685.980, 3884155.224; 716685.994, 3884155.206; 716689.693, 3884150.562; 716694.764, 3884147.247; 716699.477, 3884144.214; 716699.562, 3884144.158; 716704.378, 3884140.882; 716704.487, 3884140.805; 716704.565, 3884140.747; 716709.041, 3884137.309; 716714.113, 3884134.063; 716714.316, 3884133.924; 716714.458, 3884133.815; 716717.876, 3884131.077; 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(iii) Subunit 1C, Pavilion Hill/Worm Valley. Land bounded by the following UTM NAD83 coordinates (E,N): 716894.817, 3883793.540; 716894.818, 3883793.513; 716895.023, 3883793.313; 716895.056, 3883793.091; 716895.113, 3883793.004; 716895.026, 3883792.897; 716895.141, 3883792.866; 716895.134, 3883791.058; 716895.279, 3883790.668; 716895.239, 3883790.462; 716895.397, 3883785.028; 716895.757, 3883781.093; 716895.982, 3883777.129; 716896.401, 3883773.172; 716896.438, 3883769.454; 716896.921, 3883764.922; 716897.180, 3883759.756; 716897.352, 3883754.768; 716897.228, 3883750.243; 716897.638, 3883745.566; 716898.109, 3883739.784; 716897.606, 3883731.547; 716896.419, 3883726.856; 716895.878, 3883721.039; 716893.923, 3883719.567; 716884.094, 3883721.726; 716880.644, 3883724.527; 716865.544, 3883729.353; 716857.382, 3883730.197; 716850.564, 3883731.733; 716843.320, 3883733.403; 716830.408, 3883738.391; 716818.587, 3883741.089; 716820.411, 3883739.552; 716811.347, 3883742.628; 716805.696, 3883744.725; 716786.251, 3883750.247; 716778.841, 3883756.654; 716781.857, 3883751.163; 716772.648, 3883764.461; 716770.316, 3883774.861; 716762.085, 3883778.041; 716755.289, 3883779.592; 716755.115, 3883779.493; 716754.879, 3883779.380; 716754.636, 3883779.282; 716754.387, 3883779.200; 716754.134, 3883779.134; 716753.877, 3883779.085; 716753.617, 3883779.053; 716753.355, 3883779.039; 716753.094, 3883779.041; 716752.833, 3883779.060; 716752.573, 3883779.097; 716752.317, 3883779.150; 716752.065, 3883779.220; 716751.975, 3883779.250; 716749.910, 3883779.950; 716750.256, 3883779.191; 716752.940, 3883774.596; 716752.209, 3883763.303; 716751.560, 3883761.180; 716751.026, 3883760.838; 716754.987, 3883761.626; 716750.283, 3883759.801; 716748.319, 3883753.354; 716745.450, 3883746.057; 716743.047, 3883738.857; 716741.138, 3883731.817; 716740.636, 3883727.264; 716742.033, 3883724.086; 716736.756, 3883719.917; 716735.780, 3883713.573; 716735.404, 3883706.794; 716739.602, 3883701.190; 716734.734, 3883695.456; 716733.680, 3883697.791; 716729.837, 3883690.909; 716722.503, 3883697.759; 716717.242, 3883698.439; 716710.537, 3883701.946; 716705.558, 3883703.903; 716699.762, 3883705.718; 716696.198, 3883706.380; 716690.006, 3883707.757; 716680.662, 3883711.183; 716673.895, 3883713.048; 716668.015, 3883714.808; 716662.611, 3883716.538; 716658.365, 3883718.094; 716655.826, 3883715.982; 716652.167, 3883717.551; 716647.656, 3883725.128; 716640.645, 3883725.486; 716636.870, 3883727.518; 716631.049, 3883729.735; 716624.483, 3883732.652; 716619.098, 3883734.323; 716610.819, 3883738.047; 716604.768, 3883742.180; 716597.199, 3883742.357; 716587.489, 3883750.730; 716580.838, 3883753.611; 716576.490, 3883754.253; 716572.680, 3883756.310; 716569.091, 3883761.247; 716564.447, 3883762.556; 716559.505, 3883762.203; 716554.060, 3883765.470; 716546.592, 3883770.798; 716539.556, 3883776.090; 716533.122, 3883779.271; 716528.231, 3883781.450; 716523.819, 3883783.496; 716518.371, 3883785.689; 716514.201, 3883787.687; 716509.412, 3883789.857; 716503.010, 3883792.562; 716495.811, 3883796.874; 716490.577, 3883797.686; 716484.646, 3883800.976; 716478.873, 3883803.353; 716472.718, 3883806.903; 716459.697, 3883812.083; 716452.556, 3883812.041; 716449.126, 3883813.090; 716445.771, 3883814.799; 716438.861, 3883813.729; 716431.707, 3883812.888; 716427.599, 3883813.116; 716425.870, 3883815.177; 716418.905, 3883814.429; 716413.260, 3883813.488; 716410.385, 3883814.331; 716405.217, 3883813.985; 716396.118, 3883821.989; 716390.959, 3883825.373; 716386.399, 3883828.618; 716377.350, 3883829.360; 716373.955, 3883831.710; 716367.160, 3883834.701; 716362.063, 3883836.701; 716357.431, 3883838.339; 716352.862, 3883840.106; 716347.132, 3883842.740; 716340.569, 3883845.584; 716336.234, 3883846.989; 716331.600, 3883849.285; 716329.067, 3883850.756; 716307.097, 3883869.711; 716306.777, 3883870.348; 716304.842, 3883871.688; 716304.766, 3883871.721; 716282.485, 3883890.944; 716254.246, 3883995.426; 716274.013, 3884037.783; 716347.432, 3884043.431; 716379.470, 3884028.108; 716391.592, 3884019.370; 716392.069, 3884016.354; 716398.233, 3884007.627; 716399.503, 3884002.347; 716402.247, 3883998.316; 716403.538, 3883993.878; 716403.685, 3883994.005; 716403.894, 3883994.163; 716404.113, 3883994.306; 716404.341, 3883994.435; 716404.577, 3883994.549; 716404.820,

3883994.647; 716405.068, 3883994.729; 716405.322, 3883994.794; 716405.579, 3883994.843; 716405.839, 3883994.875; 716406.100, 3883994.890; 716406.362, 3883994.887; 716406.623, 3883994.868; 716406.882, 3883994.832; 716407.139, 3883994.778; 716407.391, 3883994.708; 716407.638, 3883994.622; 716407.879, 3883994.520; 716407.894, 3883994.513; 716422.652, 3883987.594; 716522.781, 3883949.968; 716542.276, 3883938.949; 716553.369, 3883938.333; 716573.677, 3883928.384; 716573.834, 3883928.303; 716574.059, 3883928.170; 716574.110, 3883928.137; 716581.327, 3883923.407; 716587.636, 3883920.284; 716587.778, 3883920.210; 716588.004, 3883920.077; 716588.220, 3883919.930; 716588.256, 3883919.903; 716595.356, 3883914.596; 716594.056, 3883916.735; 716593.930, 3883916.958; 716593.816, 3883917.194; 716593.718, 3883917.436; 716593.636, 3883917.685; 716593.570, 3883917.939; 716593.548, 3883918.047; 716592.117, 3883925.385; 716592.091, 3883925.534; 716592.059, 3883925.794; 716592.054, 3883925.859; 716591.668, 3883931.129; 716591.013, 3883933.296; 716591.004, 3883933.327; 716590.938, 3883933.580; 716590.889, 3883933.838; 716590.857, 3883934.098; 716590.843, 3883934.359; 716590.845, 3883934.621; 716590.864, 3883934.882; 716590.901, 3883935.141; 716590.954, 3883935.397; 716591.024, 3883935.650; 716591.111, 3883935.897; 716591.213, 3883936.138; 716591.258, 3883936.228; 716593.105, 3883936.125; 716607.224, 3883972.835; 716606.342, 3883992.830; 716609.630, 3884000.910; 716609.706, 3884001.085; 716609.824, 3884001.319; 716609.957, 3884001.545; 716610.105, 3884001.761; 716610.159, 3884001.834; 716616.464, 3884010.069; 716616.571, 3884010.202; 716616.745, 3884010.398; 716616.932, 3884010.581; 716617.048, 3884010.684; 716619.173, 3884012.492; 716627.296, 3884023.776; 716627.312, 3884023.798; 716627.473, 3884024.004; 716627.648, 3884024.200; 716627.834, 3884024.383; 716628.033, 3884024.554; 716628.242, 3884024.712; 716628.461, 3884024.855; 716628.689, 3884024.984; 716628.924, 3884025.098; 716629.167, 3884025.196; 716629.416, 3884025.278; 716629.669, 3884025.343; 716629.926, 3884025.392; 716630.186, 3884025.424; 716630.448, 3884025.439; 716630.710, 3884025.436; 716630.971, 3884025.417; 716631.230, 3884025.380; 716631.486, 3884025.327; 716631.738, 3884025.257; 716631.986, 3884025.171; 716632.078, 3884025.134; 716635.411, 3884023.749; 716636.702, 3884025.666; 716636.789, 3884025.790; 716636.950, 3884025.996; 716637.125, 3884026.191; 716637.311, 3884026.375; 716637.510, 3884026.546; 716637.719, 3884026.703; 716637.938, 3884026.847; 716638.166, 3884026.976; 716638.402, 3884027.089; 716638.644, 3884027.187; 716638.893, 3884027.269; 716639.146, 3884027.335; 716639.404, 3884027.384; 716639.663, 3884027.416; 716639.925, 3884027.430; 716640.187, 3884027.428; 716640.211, 3884027.427; 716644.692, 3884027.213; 716644.929, 3884027.195; 716645.188, 3884027.158; 716645.444, 3884027.105; 716645.697, 3884027.035; 716645.944, 3884026.949; 716646.185, 3884026.846; 716646.418, 3884026.728; 716646.453, 3884026.709; 716651.157, 3884024.080; 716651.347, 3884023.966; 716651.564, 3884023.819; 716651.770, 3884023.658; 716651.965, 3884023.483; 716652.125, 3884023.511; 716652.385, 3884023.543; 716652.646, 3884023.558; 716652.908, 3884023.555; 716653.169, 3884023.536; 716653.428, 3884023.499; 716653.684, 3884023.446; 716653.937, 3884023.376; 716654.134, 3884023.308; 716657.966, 3884021.885; 716658.015, 3884021.866; 716658.256, 3884021.764; 716658.490, 3884021.646; 716658.716, 3884021.513; 716658.932, 3884021.366; 716659.138, 3884021.205; 716716.356, 3883977.102; 716719.294, 3883973.941; 716719.893, 3883976.072; 716723.724, 3883974.649; 716727.017, 3883969.733; 716727.856, 3883970.661; 716737.189, 3883961.003; 716739.687, 3883959.071; 716745.828, 3883955.497; 716751.094, 3883951.779; 716754.384, 3883948.849; 716756.800, 3883944.963; 716760.374, 3883939.050; 716763.707, 3883933.476; 716767.915, 3883926.347; 716771.618, 3883920.281; 716774.992, 3883914.527; 716778.561, 3883908.756; 716782.701, 3883898.341; 716785.405, 3883896.666; 716788.821, 3883890.653; 716791.264, 3883886.276; 716795.420, 3883881.684; 716800.330, 3883876.366; 716805.502, 3883871.019; 716810.101, 3883866.336; 716815.718, 3883861.322; 716820.804, 3883856.541; 716824.339, 3883855.485; 716826.789, 3883852.822; 716831.571, 3883848.034; 716835.594, 3883843.964; 716840.245, 3883839.450; 716844.653, 3883835.037; 716848.342, 3883829.618; 716849.205, 3883833.680; 716853.944, 3883829.154; 716859.415, 3883824.017; 716864.352, 3883819.915; 716868.818, 3883816.424; 716873.736, 3883812.338; 716878.287, 3883808.517; 716883.475, 3883802.657; 716887.873, 3883798.422; 716891.346, 3883796.095 thence returning to 716894.817, 3883793.540.

(iv) Subunit 1D, BBQ Flats. Land bounded by the following UTM NAD83 coordinates (E,N): 716662.492, 3883703.620; 716662.553, 3883703.539; 716662.757, 3883703.577; 716663.017, 3883703.609; 716663.279, 3883703.624; 716663.540, 3883703.622; 716663.801, 3883703.602; 716664.061, 3883703.566; 716664.317, 3883703.512; 716664.504, 3883703.462; 716670.661, 3883701.650; 716670.726, 3883701.630; 716670.973, 3883701.543; 716671.214, 3883701.441; 716671.448, 3883701.323; 716671.674, 3883701.190; 716671.890, 3883701.043; 716671.953, 3883700.996; 716676.003, 3883697.914; 716696.248, 3883691.759; 716696.341, 3883691.835; 716696.369, 3883691.858; 716696.578, 3883692.015; 716696.797, 3883692.159; 716697.025, 3883692.288; 716697.261, 3883692.401; 716697.503, 3883692.500; 716697.752, 3883692.581; 716698.005, 3883692.647; 716698.263, 3883692.696; 716698.523, 3883692.728; 716698.784, 3883692.742; 716699.046, 3883692.740; 716699.307, 3883692.721; 716699.566, 3883692.684; 716699.822, 3883692.631; 716700.075, 3883692.561; 716700.322, 3883692.475; 716700.563, 3883692.372; 716700.797, 3883692.254; 716701.022, 3883692.121; 716701.238, 3883691.974; 716701.445, 3883691.813; 716701.640, 3883691.639; 716701.823, 3883691.452; 716701.994, 3883691.253; 716702.152, 3883691.044; 716702.190, 3883690.989; 716705.299, 3883686.406; 716711.536, 3883687.450; 716711.580, 3883687.457; 716711.840, 3883687.489; 716712.101, 3883687.504; 716712.363, 3883687.502; 716712.624, 3883687.482; 716712.883, 3883687.446; 716713.139, 3883687.392; 716713.392, 3883687.322; 716713.639, 3883687.236; 716713.880, 3883687.134; 716714.114, 3883687.016; 716714.339, 3883686.883; 716714.556, 3883686.736; 716714.762, 3883686.574; 716714.957, 3883686.400; 716715.141, 3883686.213; 716715.311, 3883686.015; 716715.406, 3883685.893; 716718.530, 3883681.696; 716721.916, 3883683.006; 716721.983, 3883683.031; 716722.232, 3883683.113; 716722.485, 3883683.178; 716722.742, 3883683.227; 716723.002, 3883683.259; 716723.264, 3883683.274; 716723.525, 3883683.272; 716723.787, 3883683.252; 716724.046, 3883683.216; 716724.302, 3883683.162; 716724.554, 3883683.092; 716724.802, 3883683.006; 716725.042, 3883682.904; 716725.276, 3883682.786; 716725.502, 3883682.653; 716725.718, 3883682.505; 716725.924, 3883682.344; 716726.120, 3883682.170; 716726.218, 3883682.073; 716728.719, 3883679.518; 716736.853, 3883675.299; 716744.608, 3883673.190; 716744.753, 3883673.148; 716745.000, 3883673.061; 716745.241, 3883672.959; 716745.475, 3883672.841; 716745.701, 3883672.708; 716745.917, 3883672.561; 716746.123, 3883672.400; 716746.319, 3883672.225; 716746.447, 3883672.098; 716751.092, 3883667.250; 716756.332, 3883664.419; 716762.515, 3883661.333; 716762.646, 3883661.265; 716762.871, 3883661.132; 716763.088, 3883660.984; 716763.294, 3883660.823; 716763.489, 3883660.649; 716763.673, 3883660.462; 716763.844, 3883660.264; 716764.001, 3883660.054; 716764.078, 3883659.941;

716781.010, 3883652.836; 716781.145, 3883652.776; 716781.379, 3883652.658; 716781.605, 3883652.525; 716781.821, 3883652.378; 716782.027, 3883652.217; 716782.223, 3883652.043; 716782.406, 3883651.856; 716846.613, 3883605.661; 716847.908, 3883602.347; 716846.575, 3883596.354; 716846.118, 3883594.105; 716848.243, 3883582.344; 716830.249, 3883581.517; 716822.498, 3883548.229; 716824.840, 3883549.237; 716870.557, 3883517.523; 716877.439, 3883514.290; 716878.074, 3883513.912; 716878.697, 3883513.833; 716878.962, 3883513.084; 716876.734, 3883507.286; 716874.152, 3883499.770; 716873.834, 3883476.283; 716838.819, 3883497.907; 716830.302, 3883500.678; 716822.911, 3883503.746; 716813.954, 3883505.351; 716806.476, 3883510.453; 716806.757, 3883508.468; 716797.703, 3883511.995; 716792.915, 3883514.331; 716788.712, 3883514.407; 716783.442, 3883516.712; 716778.647, 3883519.660; 716710.077, 3883558.115; 716709.882, 3883558.290; 716709.698, 3883558.476; 716709.561, 3883558.634; 716707.444, 3883561.192; 716707.410, 3883561.232; 716707.253, 3883561.442; 716707.109, 3883561.661; 716706.981, 3883561.888; 716706.867, 3883562.124; 716706.769, 3883562.367; 716706.687, 3883562.616; 716706.621, 3883562.869; 716706.573, 3883563.126; 716706.541, 3883563.386; 716706.526, 3883563.648; 716706.527, 3883563.719; 716705.001, 3883566.328; 716704.910, 3883566.493; 716704.796, 3883566.729; 716704.698, 3883566.972; 716704.616, 3883567.220; 716704.550, 3883567.474; 716704.535, 3883567.548; 716704.137, 3883569.497; 716702.011, 3883570.841; 716702.006, 3883570.845; 716701.842, 3883570.954; 716696.499, 3883574.723; 716694.409, 3883574.886; 716694.293, 3883574.897; 716694.034, 3883574.934; 716693.777, 3883574.987; 716693.525, 3883575.057; 716693.278, 3883575.143; 716693.037, 3883575.246; 716692.803, 3883575.364; 716692.671, 3883575.439; 716686.500, 3883579.119; 716680.289, 3883582.632; 716680.116, 3883582.736; 716679.908, 3883582.877; 716673.574, 3883587.475; 716667.823, 3883590.136; 716667.820, 3883590.138; 716667.741, 3883590.175; 716662.671, 3883592.663; 716662.516, 3883592.743; 716662.291, 3883592.876; 716662.277, 3883592.884; 716658.532, 3883595.280; 716655.845, 3883596.935; 716655.812, 3883596.956; 716650.045, 3883600.586; 716650.034, 3883600.593; 716649.817, 3883600.741; 716649.643, 3883600.875; 716646.032, 3883603.830; 716641.207, 3883607.380; 716630.555, 3883613.654; 716630.533, 3883613.667; 716626.400, 3883616.138; 716614.151, 3883621.989; 716613.959, 3883622.087; 716613.733, 3883622.220; 716613.517, 3883622.368; 716613.311, 3883622.529; 716613.115, 3883622.703; 716612.932, 3883622.890; 716612.761, 3883623.088; 716612.603, 3883623.297; 716612.460, 3883623.516; 716612.331, 3883623.744; 716612.217, 3883623.980; 716612.119, 3883624.223; 716612.037, 3883624.472; 716611.972, 3883624.725; 716611.923, 3883624.982; 716611.891, 3883625.242; 716611.876, 3883625.503; 716611.879, 3883625.765; 716611.898, 3883626.026; 716611.935, 3883626.286; 716611.988, 3883626.542; 716612.058, 3883626.794; 716612.144, 3883627.041; 716612.247, 3883627.282; 716612.274, 3883627.339; 716614.124, 3883631.169; 716612.901, 3883635.949; 716612.873, 3883636.066; 716612.824, 3883636.323; 716612.793, 3883636.583; 716612.778, 3883636.844; 716612.780, 3883637.106; 716612.800, 3883637.367; 716612.836, 3883637.627; 716612.889, 3883637.883; 716612.959, 3883638.135; 716613.046, 3883638.382; 716613.148, 3883638.623; 716613.185, 3883638.700; 716618.284, 3883649.109; 716616.935, 3883652.719; 716616.926, 3883652.743; 716616.844, 3883652.992; 716616.778, 3883653.246; 716616.730, 3883653.503; 716616.698, 3883653.763; 716616.683, 3883654.024; 716616.685, 3883654.286; 716616.705, 3883654.547; 716616.741, 3883654.806; 716616.791, 3883655.048; 716618.076, 3883660.432; 716618.079, 3883660.446; 716618.149, 3883660.698; 716618.236, 3883660.946; 716618.338, 3883661.187; 716618.456, 3883661.420; 716618.589, 3883661.646; 716618.736, 3883661.862; 716618.897, 3883662.069; 716619.072, 3883662.264; 716619.258, 3883662.447; 716619.457, 3883662.618; 716619.666, 3883662.776; 716619.885, 3883662.919; 716620.113, 3883663.048; 716620.349, 3883663.162; 716620.591, 3883663.260; 716620.717, 3883663.303; 716620.892, 3883665.278; 716620.899, 3883665.351; 716620.936, 3883665.611; 716620.989, 3883665.867; 716621.017, 3883665.974; 716621.470, 3883667.640; 716621.422, 3883667.668; 716621.205, 3883667.815; 716620.999, 3883667.977; 716620.804, 3883668.151; 716620.620, 3883668.338; 716620.449, 3883668.536; 716620.292, 3883668.745; 716620.148, 3883668.964; 716620.019, 3883669.192; 716619.906, 3883669.428; 716619.808, 3883669.671; 716619.726, 3883669.919; 716619.660, 3883670.173; 716619.611, 3883670.430; 716619.579, 3883670.690; 716619.565, 3883670.951; 716619.567, 3883671.213; 716619.586, 3883671.474; 716619.623, 3883671.733; 716619.676, 3883671.990; 716619.746, 3883672.242; 716619.833, 3883672.489; 716619.935, 3883672.730; 716620.030, 3883672.922; 716625.676, 3883683.560; 716625.699, 3883683.602; 716625.742, 3883683.679; 716628.499, 3883688.472; 716628.162, 3883689.465; 716628.112, 3883689.624; 716628.046, 3883689.877; 716627.997, 3883690.135; 716627.966, 3883690.395; 716627.951, 3883690.656; 716627.952, 3883690.886; 716628.102, 3883695.334; 716628.103, 3883695.365; 716628.122, 3883695.626; 716628.159, 3883695.886; 716628.212, 3883696.142; 716628.282, 3883696.394; 716628.290, 3883696.419; 716630.037, 3883701.872; 716629.949, 3883701.940; 716629.754, 3883702.115; 716629.571, 3883702.301; 716629.400, 3883702.500; 716629.242, 3883702.709; 716629.099, 3883702.928; 716628.970, 3883703.156; 716628.856, 3883703.391; 716628.758, 3883703.634; 716628.676, 3883703.883; 716628.611, 3883704.136; 716628.562, 3883704.393; 716628.530, 3883704.653; 716628.515, 3883704.915; 716628.517, 3883705.176; 716628.537, 3883705.438; 716628.573, 3883705.697; 716628.627, 3883705.953; 716628.697, 3883706.205; 716628.783, 3883706.453; 716628.885, 3883706.694; 716629.003, 3883706.927; 716629.136, 3883707.153; 716629.283, 3883707.369; 716629.445, 3883707.575; 716629.619, 3883707.771; 716629.806, 3883707.954; 716630.004, 3883708.125; 716630.213, 3883708.283; 716630.314, 3883708.352; 716633.372, 3883710.365; 716633.490, 3883710.440; 716633.718, 3883710.568; 716633.954, 3883710.682; 716634.196, 3883710.780; 716634.445, 3883710.862; 716634.699, 3883710.928; 716634.956, 3883710.976; 716635.216, 3883711.008; 716635.477, 3883711.023; 716635.739, 3883711.021; 716636.000, 3883711.001; 716636.259, 3883710.965; 716636.515, 3883710.912; 716636.768, 3883710.842; 716637.015, 3883710.755; 716637.256, 3883710.653; 716637.490, 3883710.535; 716637.715, 3883710.402; 716637.931, 3883710.255; 716638.138, 3883710.094; 716638.333, 3883709.919; 716638.517, 3883709.732; 716638.687, 3883709.534; 716638.845, 3883709.325; 716638.988, 3883709.106; 716639.117, 3883708.878; 716639.231, 3883708.642; 716639.287, 3883708.505; 716645.857, 3883708.390; 716645.954, 3883708.387; 716646.215, 3883708.367; 716646.363, 3883708.349; 716651.171, 3883707.649; 716651.282, 3883707.632; 716651.538, 3883707.578; 716651.723, 3883707.529; 716660.505, 3883704.948; 716660.572, 3883704.928; 716660.820, 3883704.841; 716661.060, 3883704.739; 716661.294, 3883704.621; 716661.520, 3883704.488; 716661.736, 3883704.341; 716661.942, 3883704.180; 716662.138, 3883704.005; 716662.321, 3883703.819 thence returning to 716662.492, 3883703.620.

(v) Subunit 1E, BBQ Flats South. Land bounded by the following UTM NAD83 coordinates (E,N): 716883.745, 3883335.605; 716832.007, 3883326.573; 716762.938, 3883366.547; 716762.713, 3883366.680; 716762.496, 3883366.828; 716762.386, 3883366.911; 716753.954,

3883373.526; 716753.858, 3883373.604; 716753.663, 3883373.778; 716753.480, 3883373.965; 716753.309, 3883374.163; 716753.151, 3883374.372; 716753.008, 3883374.591; 716752.879, 3883374.819; 716752.765, 3883375.055; 716752.667, 3883375.298; 716752.585, 3883375.546; 716752.576, 3883375.583; 716713.260, 3883408.071; 716713.243, 3883408.085; 716713.047, 3883408.259; 716712.864, 3883408.446; 716712.693, 3883408.644; 716712.536, 3883408.853; 716712.392, 3883409.072; 716712.263, 3883409.300; 716712.149, 3883409.536; 716712.051, 3883409.779; 716711.969, 3883410.027; 716711.904, 3883410.281; 716711.855, 3883410.538; 716711.823, 3883410.798; 716711.808, 3883411.059; 716711.811, 3883411.321; 716711.830, 3883411.582; 716711.867, 3883411.841; 716711.920, 3883412.098; 716711.990, 3883412.350; 716712.076, 3883412.597; 716712.179, 3883412.838; 716712.297, 3883413.072; 716712.430, 3883413.297; 716712.577, 3883413.514; 716712.738, 3883413.720; 716712.912, 3883413.915; 716713.099, 3883414.099; 716713.298, 3883414.270; 716713.315, 3883414.284; 716718.617, 3883418.508; 716718.780, 3883418.631; 716722.305, 3883421.156; 716729.087, 3883430.383; 716729.125, 3883430.434; 716736.013, 3883439.503; 716736.129, 3883439.648; 716736.303, 3883439.844; 716736.490, 3883440.027; 716736.538, 3883440.071; 716739.111, 3883442.362; 716742.003, 3883446.657; 716742.090, 3883446.782; 716742.251, 3883446.988; 716742.426, 3883447.183; 716742.613, 3883447.367; 716742.811, 3883447.538; 716742.886, 3883447.596; 716751.935, 3883454.542; 716752.069, 3883454.641; 716752.288, 3883454.784; 716752.516, 3883454.913; 716752.752, 3883455.027; 716752.995, 3883455.125; 716753.243, 3883455.207; 716753.497, 3883455.272; 716753.754, 3883455.321; 716754.014, 3883455.353; 716754.275, 3883455.368; 716754.537, 3883455.366; 716754.798, 3883455.346; 716755.057, 3883455.310; 716755.314, 3883455.256; 716755.343, 3883455.249; 716828.044, 3883437.035; 716833.573, 3883433.873; 716896.157, 3883389.216; 716894.278, 3883387.175; 716894.264, 3883387.066; 716894.224, 3883387.056; 716892.893, 3883381.727; 716891.470, 3883373.796; 716890.273, 3883368.797; 716884.928, 3883341.941 thence returning to 716883.745, 3883335.605.

(vi) Subunit 1F, Heather. Land bounded by the following UTM NAD83 coordinates (E,N): 716784.583, 3882681.203; 716790.078, 3882678.885; 716793.882, 3882680.178; 716794.042, 3882680.229; 716794.296, 3882680.295; 716794.553, 3882680.343; 716794.813, 3882680.375; 716795.074, 3882680.390; 716795.336, 3882680.388; 716795.597, 3882680.368; 716795.856, 3882680.332; 716796.113, 3882680.279; 716796.365, 3882680.209; 716796.612, 3882680.122; 716796.853, 3882680.020; 716797.087, 3882679.902; 716797.312, 3882679.769; 716797.529, 3882679.622; 716797.735, 3882679.461; 716797.930, 3882679.286; 716798.114, 3882679.099; 716798.285, 3882678.901; 716798.442, 3882678.692; 716798.586, 3882678.473; 716798.715, 3882678.245; 716798.717, 3882678.239; 716800.128, 3882678.398; 716800.220, 3882678.408; 716800.481, 3882678.422; 716800.743, 3882678.420; 716801.004, 3882678.401; 716801.264, 3882678.364; 716801.520, 3882678.311; 716801.772, 3882678.241; 716802.019, 3882678.155; 716802.260, 3882678.052; 716802.494, 3882677.934; 716802.720, 3882677.801; 716802.840, 3882677.722; 716806.378, 3882675.294; 716808.339, 3882674.910; 716808.396, 3882674.938; 716808.589, 3882675.030; 716808.832, 3882675.128; 716809.081, 3882675.210; 716809.334, 3882675.276; 716809.591, 3882675.324; 716809.851, 3882675.356; 716810.113, 3882675.371; 716810.374, 3882675.369; 716810.399, 3882675.368; 716815.192, 3882675.139; 716815.429, 3882675.121; 716815.688, 3882675.084; 716815.944, 3882675.031; 716816.197, 3882674.961; 716816.236, 3882674.948; 716822.513, 3882672.912; 716822.721, 3882672.838; 716822.962, 3882672.736; 716823.195, 3882672.618; 716823.267, 3882672.578; 716828.870, 3882669.367; 716843.194, 3882665.639; 716847.550, 3882665.134; 716847.776, 3882665.101; 716848.032, 3882665.048; 716848.284, 3882664.978; 716848.413, 3882664.935; 716851.671, 3882663.793; 716862.880, 3882660.067; 716866.572, 3882663.574; 716866.618, 3882663.617; 716866.816, 3882663.788; 716867.026, 3882663.946; 716867.245, 3882664.089; 716867.472, 3882664.218; 716867.708, 3882664.332; 716867.951, 3882664.430; 716868.200, 3882664.512; 716868.453, 3882664.577; 716868.710, 3882664.626; 716868.970, 3882664.658; 716869.232, 3882664.673; 716869.493, 3882664.671; 716869.754, 3882664.651; 716870.014, 3882664.615; 716870.270, 3882664.561; 716870.522, 3882664.491; 716870.769, 3882664.405; 716871.010, 3882664.303; 716871.244, 3882664.185; 716871.470, 3882664.052; 716871.686, 3882663.904; 716871.892, 3882663.743; 716872.088, 3882663.569; 716936.478, 3882617.187; 716949.166, 3882602.055; 716959.466, 3882569.184; 716946.432, 3882545.182; 716926.775, 3882537.834; 716886.871, 3882517.221; 716885.448, 3882517.684; 716883.506, 3882514.298; 716883.981, 3882514.482; 716885.167, 3882514.932; 716885.707, 3882514.059; 716886.511, 3882512.426; 716886.998, 3882511.172; 716888.428, 3882506.554; 716888.704, 3882503.404; 716884.241, 3882505.969; 716820.357, 3882543.071; 716820.110, 3882543.158; 716819.869, 3882543.260; 716819.635, 3882543.378; 716819.559, 3882543.421; 716815.096, 3882545.986; 716814.947, 3882546.076; 716814.731, 3882546.224; 716814.524, 3882546.385; 716814.329, 3882546.559; 716814.175, 3882546.714; 716765.677, 3882598.293; 716762.280, 3882600.303; 716762.174, 3882600.367; 716761.957, 3882600.515; 716761.751, 3882600.676; 716761.556, 3882600.850; 716761.372, 3882601.037; 716761.335, 3882601.079; 716748.696, 3882615.209; 716748.563, 3882615.365; 716748.406, 3882615.575; 716748.262, 3882615.794; 716748.133, 3882616.021; 716748.020, 3882616.257; 716747.922, 3882616.500; 716747.898, 3882616.567; 716746.564, 3882620.419; 716730.054, 3882630.548; 716730.003, 3882630.579; 716729.787, 3882630.727; 716729.581, 3882630.888; 716729.385, 3882631.062; 716729.202, 3882631.249; 716729.031, 3882631.447; 716728.873, 3882631.656; 716728.730, 3882631.875; 716728.601, 3882632.103; 716728.487, 3882632.339; 716728.389, 3882632.582; 716728.307, 3882632.831; 716728.242, 3882633.084; 716728.193, 3882633.341; 716728.161, 3882633.601; 716728.146, 3882633.862; 716728.149, 3882634.124; 716728.149, 3882634.142; 716728.370, 3882638.923; 716723.993, 3882643.422; 716723.916, 3882643.503; 716723.745, 3882643.701; 716723.588, 3882643.910; 716723.444, 3882644.129; 716723.316, 3882644.357; 716723.202, 3882644.593; 716723.104, 3882644.836; 716723.022, 3882645.084; 716722.956, 3882645.338; 716722.908, 3882645.595; 716722.876, 3882645.855; 716722.861, 3882646.116; 716722.863, 3882646.378; 716722.883, 3882646.639; 716722.919, 3882646.898; 716722.972, 3882647.155; 716723.042, 3882647.407; 716723.129, 3882647.654; 716723.231, 3882647.895; 716723.349, 3882648.129; 716723.412, 3882648.239; 716726.009, 3882652.657; 716725.490, 3882655.870; 716725.486, 3882655.892; 716725.454, 3882656.152; 716725.445, 3882656.275; 716725.242, 3882659.750; 716723.505, 3882661.467; 716723.374, 3882661.603; 716723.203, 3882661.802; 716723.046, 3882662.011; 716722.902, 3882662.230; 716722.773, 3882662.458; 716722.660, 3882662.693; 716722.562, 3882662.936; 716722.480, 3882663.185; 716722.414, 3882663.438; 716722.365, 3882663.696; 716722.334, 3882663.955; 716722.319, 3882664.217; 716722.321, 3882664.479; 716722.340, 3882664.740; 716722.377, 3882664.999; 716722.430, 3882665.255; 716722.500, 3882665.507; 716722.587, 3882665.755; 716722.689, 3882665.996; 716722.807, 3882666.229; 716722.940, 3882666.455; 716723.087, 3882666.671; 716723.248, 3882666.878; 716723.423, 3882667.073; 716723.609,

3882667.256; 716723.808, 3882667.427; 716724.017, 3882667.585; 716724.030, 3882667.594; 716727.957, 3882670.333; 716728.240, 3882671.291; 716728.259, 3882671.353; 716728.345, 3882671.600; 716728.447, 3882671.841; 716728.565, 3882672.075; 716728.698, 3882672.301; 716728.845, 3882672.517; 716729.007, 3882672.723; 716729.181, 3882672.919; 716729.368, 3882673.102; 716729.566, 3882673.273; 716729.775, 3882673.431; 716729.994, 3882673.574; 716730.222, 3882673.703; 716730.458, 3882673.817; 716730.701, 3882673.915; 716730.949, 3882673.997; 716731.203, 3882674.062; 716731.212, 3882674.064; 716740.619, 3882676.147; 716749.592, 3882681.884; 716749.665, 3882681.929; 716749.893, 3882682.058; 716750.039, 3882682.130; 716752.537, 3882683.310; 716755.820, 3882685.107; 716758.514, 3882691.850; 716758.600, 3882692.049; 716758.718, 3882692.282; 716758.851, 3882692.508; 716758.998, 3882692.724; 716759.159, 3882692.931; 716759.334, 3882693.126; 716759.520, 3882693.309; 716759.719, 3882693.480; 716759.928, 3882693.638; 716760.147, 3882693.781; 716760.375, 3882693.910; 716760.611, 3882694.024; 716760.853, 3882694.122; 716761.102, 3882694.204; 716761.355, 3882694.269; 716761.613, 3882694.318; 716761.872, 3882694.350; 716762.134, 3882694.365; 716762.396, 3882694.363; 716762.657, 3882694.343; 716762.916, 3882694.307; 716763.172, 3882694.253; 716763.424, 3882694.183; 716763.672, 3882694.097; 716763.913, 3882693.995; 716764.146, 3882693.877; 716764.372, 3882693.744; 716764.588, 3882693.596; 716764.795, 3882693.435; 716764.990, 3882693.261; 716765.173, 3882693.074; 716765.344, 3882692.876; 716765.352, 3882692.866; 716769.410, 3882687.799; 716776.201, 3882685.905; 716776.321, 3882685.869; 716776.569, 3882685.783; 716776.809, 3882685.681; 716777.043, 3882685.563; 716777.129, 3882685.514 thence returning to 716784.583, 3882681.203.

(vii) Subunit 1G, Acacia. Land bounded by the following UTM NAD83 coordinates (E,N): 716718.721, 3882577.999; 716751.938, 3882570.643; 716752.016, 3882570.625; 716752.268, 3882570.555; 716752.515, 3882570.468; 716752.706, 3882570.389; 716759.160, 3882567.504; 716759.210, 3882567.481; 716759.444, 3882567.363; 716824.678, 3882520.366; 716822.921, 3882517.054; 716825.522, 3882511.950; 716833.378, 3882505.015; 716834.060, 3882499.460; 716835.340, 3882498.057; 716839.070, 3882490.821; 716846.482, 3882479.361; 716850.034, 3882471.968; 716848.255, 3882468.024; 716847.042, 3882462.457; 716846.229, 3882456.972; 716848.553, 3882456.039; 716837.921, 3882409.509; 716795.984, 3882413.456; 716751.234, 3882430.858; 716735.179, 3882437.432; 716665.668, 3882477.687; 716665.523, 3882477.798; 716652.405, 3882488.329; 716652.405, 3882545.528; 716659.254, 3882569.501; 716665.062, 3882570.418; 716670.843, 3882572.077; 716675.375, 3882573.500; 716675.446, 3882573.521; 716675.700, 3882573.587; 716675.957, 3882573.636; 716676.217, 3882573.668; 716676.478, 3882573.682; 716676.740, 3882573.680; 716677.001, 3882573.661; 716677.260, 3882573.624; 716677.516, 3882573.571; 716677.769, 3882573.501; 716677.843, 3882573.477; 716680.044, 3882575.383; 716680.153, 3882575.474; 716680.362, 3882575.631; 716680.581, 3882575.775; 716680.809, 3882575.904; 716681.045, 3882576.017; 716681.287, 3882576.115; 716681.536, 3882576.197; 716681.790, 3882576.263; 716682.047, 3882576.312; 716682.307, 3882576.344; 716682.568, 3882576.358; 716682.830, 3882576.356; 716683.091, 3882576.337; 716683.350, 3882576.300; 716683.606, 3882576.247; 716683.859, 3882576.177; 716684.106, 3882576.090; 716684.347, 3882575.988; 716684.581, 3882575.870; 716684.806, 3882575.737; 716685.023, 3882575.590; 716685.229, 3882575.429; 716685.245, 3882575.415; 716686.392, 3882575.833; 716688.842, 3882577.819; 716688.851, 3882577.826; 716689.060, 3882577.984; 716689.279, 3882578.127; 716689.507, 3882578.256; 716689.743, 3882578.370; 716689.985, 3882578.468; 716690.234, 3882578.550; 716690.291, 3882578.566; 716695.133, 3882579.910; 716695.329, 3882579.959; 716695.587, 3882580.008; 716695.681, 3882580.022; 716702.240, 3882580.885; 716702.406, 3882580.903; 716702.667, 3882580.918; 716702.929, 3882580.915; 716702.984, 3882580.913; 716704.726, 3882580.816; 716709.656, 3882580.675; 716709.708, 3882580.674; 716709.969, 3882580.654; 716710.228, 3882580.618; 716710.485, 3882580.564; 716710.735, 3882580.495 thence returning to 716718.721, 3882577.999.

(viii) Subunit 1H, Cottonwood. Land bounded by the following UTM NAD83 coordinates (E,N): 716958.245, 3882272.237; 716958.363, 3882274.175; 716958.230, 3882272.171; 716958.245, 3882272.237; 716958.194, 3882271.407; 716957.590, 3882263.688; 716956.216, 3882256.286; 716956.066, 3882251.747; 716956.026, 3882250.167; 716954.917, 3882248.973; 716953.891, 3882247.496; 716953.406, 3882247.886; 716945.301, 3882242.327; 716942.778, 3882239.605; 716940.008, 3882236.569; 716934.830, 3882225.382; 716934.681, 3882225.601; 716934.914, 3882225.079; 716935.273, 3882224.168; 716936.151, 3882223.929; 716938.885, 3882223.683; 716932.237, 3882219.512; 716924.946, 3882216.975; 716918.520, 3882217.118; 716895.939, 3882211.129; 716891.707, 3882212.688; 716891.193, 3882211.675; 716890.007, 3882203.390; 716883.929, 3882201.518; 716880.200, 3882204.973; 716868.753, 3882210.290; 716860.672, 3882212.167; 716849.811, 3882215.020; 716843.944, 3882215.971; 716838.615, 3882216.924; 716839.055, 3882216.396; 716832.620, 3882217.839; 716827.773, 3882219.493; 716823.108, 3882220.931; 716817.801, 3882222.841; 716813.079, 3882224.708; 716811.400, 3882221.035; 716742.806, 3882260.790; 716742.565, 3882260.892; 716742.332, 3882261.010; 716742.106, 3882261.143; 716741.890, 3882261.290; 716741.683, 3882261.451; 716741.488, 3882261.626; 716741.414, 3882261.698; 716734.340, 3882268.802; 716729.584, 3882270.513; 716722.316, 3882272.843; 716722.095, 3882272.921; 716721.900, 3882273.003; 716717.845, 3882274.822; 716713.278, 3882277.023; 716713.037, 3882277.125; 716712.803, 3882277.243; 716701.273, 3882286.689; 716701.056, 3882286.837; 716700.850, 3882286.998; 716700.655, 3882287.172; 716700.471, 3882287.359; 716700.300, 3882287.557; 716700.143, 3882287.767; 716699.999, 3882287.986; 716699.870, 3882288.213; 716699.757, 3882288.449; 716699.659, 3882288.692; 716699.577, 3882288.941; 716699.511, 3882289.194; 716699.462, 3882289.451; 716699.431, 3882289.711; 716699.416, 3882289.973; 716699.416, 3882290.181; 716699.583, 3882296.090; 716699.585, 3882296.143; 716699.588, 3882296.205; 716700.047, 3882304.254; 716699.465, 3882307.409; 716698.430, 3882310.775; 716698.380, 3882310.828; 716698.209, 3882311.026; 716698.052, 3882311.235; 716697.908, 3882311.454; 716697.779, 3882311.682; 716697.666, 3882311.918; 716697.568, 3882312.161; 716697.486, 3882312.409; 716697.457, 3882312.511; 716696.379, 3882316.575; 716696.342, 3882316.653; 716696.269, 3882316.828; 716691.545, 3882329.033; 716691.520, 3882329.102; 716691.438, 3882329.350; 716691.372, 3882329.604; 716691.323, 3882329.861; 716691.291, 3882330.121; 716691.289, 3882330.145; 716691.034, 3882333.209; 716686.653, 3882338.481; 716686.615, 3882338.527; 716686.457, 3882338.736; 716686.314, 3882338.955; 716686.185, 3882339.183; 716686.071, 3882339.419; 716685.973, 3882339.662; 716685.956, 3882339.709; 716684.007, 3882345.248; 716681.873, 3882351.241; 716681.342, 3882352.419; 716681.242, 3882352.497; 716681.047, 3882352.672; 716680.863, 3882352.859; 716680.692, 3882353.057; 716680.535, 3882353.266; 716680.419, 3882353.440; 716678.373, 3882356.699; 716678.345, 3882356.744; 716678.216, 3882356.972; 716678.102, 3882357.208; 716678.004, 3882357.451; 716677.963, 3882357.570; 716675.160, 3882366.044; 716675.120,

3882366.173; 716675.054, 3882366.426; 716675.005, 3882366.683; 716674.973, 3882366.943; 716674.970, 3882366.982; 716674.429, 3882373.776; 716674.428, 3882373.805; 716674.417, 3882373.999; 716674.420, 3882374.260; 716674.439, 3882374.521; 716674.476, 3882374.781; 716674.529, 3882375.037; 716674.599, 3882375.289; 716674.685, 3882375.536; 716674.788, 3882375.777; 716674.906, 3882376.011; 716675.038, 3882376.237; 716675.186, 3882376.453; 716675.347, 3882376.659; 716675.521, 3882376.855; 716675.708, 3882377.038; 716675.906, 3882377.209; 716676.116, 3882377.367; 716676.335, 3882377.510; 716676.562, 3882377.639; 716676.713, 3882377.714; 716679.458, 3882379.006; 716681.049, 3882382.661; 716681.088, 3882382.748; 716681.206, 3882382.982; 716681.339, 3882383.208; 716681.486, 3882383.424; 716681.648, 3882383.630; 716681.822, 3882383.826; 716682.009, 3882384.009; 716682.207, 3882384.180; 716682.416, 3882384.337; 716682.496, 3882384.392; 716684.013, 3882385.405; 716684.152, 3882385.493; 716684.277, 3882385.566; 716686.748, 3882386.953; 716686.851, 3882387.009; 716687.087, 3882387.122; 716687.330, 3882387.221; 716687.579, 3882387.302; 716687.832, 3882387.368; 716688.089, 3882387.417; 716688.349, 3882387.449; 716688.610, 3882387.463; 716688.872, 3882387.461; 716689.133, 3882387.442; 716689.393, 3882387.405; 716689.423, 3882387.400; 716717.608, 3882382.262; 716717.627, 3882382.274; 716717.630, 3882382.276; 716717.858, 3882382.405; 716717.996, 3882382.474; 716768.871, 3882406.633; 716772.823, 3882408.654; 716773.026, 3882408.751; 716773.269, 3882408.849; 716773.335, 3882408.873; 716773.688, 3882408.995; 716778.451, 3882411.176; 716778.498, 3882411.197; 716778.741, 3882411.295; 716778.989, 3882411.377; 716779.243, 3882411.442; 716779.500, 3882411.491; 716779.760, 3882411.523; 716779.951, 3882411.535; 716785.605, 3882411.769; 716785.675, 3882411.771; 716785.936, 3882411.769; 716786.198, 3882411.750; 716786.457, 3882411.713; 716786.713, 3882411.660; 716786.834, 3882411.628; 716816.816, 3882403.360; 716816.948, 3882403.321; 716817.195, 3882403.235; 716817.436, 3882403.133; 716817.670, 3882403.015; 716817.895, 3882402.882; 716818.017, 3882402.802; 716820.714, 3882400.950; 716828.435, 3882396.849; 716828.476, 3882396.827; 716828.702, 3882396.694; 716828.918, 3882396.547; 716828.962, 3882396.514; 716834.197, 3882392.581; 716838.075, 3882389.873; 716838.144, 3882389.824; 716838.350, 3882389.663; 716838.392, 3882389.628; 716840.308, 3882387.983; 716845.238, 3882384.297; 716850.771, 3882380.379; 716850.818, 3882380.345; 716850.947, 3882380.246; 716854.506, 3882377.419; 716854.548, 3882377.385; 716866.970, 3882367.240; 716869.634, 3882365.200; 716871.805, 3882364.961; 716872.055, 3882364.926; 716872.311, 3882364.872; 716872.564, 3882364.802; 716872.811, 3882364.716; 716873.052, 3882364.614; 716873.285, 3882364.496; 716873.511, 3882364.363; 716873.727, 3882364.216; 716873.934, 3882364.054; 716874.129, 3882363.880; 716874.312, 3882363.693; 716874.483, 3882363.495; 716874.641, 3882363.286; 716874.784, 3882363.067; 716874.913, 3882362.839; 716875.027, 3882362.603; 716875.032, 3882362.591; 716876.413, 3882359.440; 716878.724, 3882357.170; 716882.904, 3882356.018; 716885.789, 3882354.037; 716893.710, 3882349.830; 716899.000, 3882345.855; 716902.936, 3882343.107; 716904.955, 3882341.373; 716910.035, 3882337.576; 716915.610, 3882333.628; 716919.169, 3882330.800; 716931.639, 3882320.616; 716935.239, 3882317.859; 716938.520, 3882317.499; 716940.210, 3882313.641; 716944.365, 3882309.560; 716946.865, 3882307.188; 716949.276, 3882305.383; 716949.981, 3882301.873; 716951.491, 3882298.769; 716953.314, 3882294.002; 716955.400, 3882288.295; 716959.502, 3882276.992; 716959.373, 3882277.026 thence returning to 716958.245, 3882272.237.

(ix) Subunit 1I, Eucalyptus North. Land bounded by the following UTM NAD83 coordinates (E,N): 716901.590, 3881944.987; 716901.517, 3881945.510; 716901.273, 3881946.033; 716900.981, 3881946.346; 716900.895, 3881946.129; 716900.785, 3881946.408; 716900.685, 3881946.112; 716900.749, 3881945.906; 716900.716, 3881945.422; 716900.831, 3881945.115; 716900.900, 3881944.993; 716900.926, 3881944.926; 716901.104, 3881945.124; 716901.217, 3881945.025; 716901.590, 3881944.987; 716902.422, 3881939.019; 716911.182, 3881899.552; 716911.287, 3881899.614; 716908.773, 3881881.225; 716904.998, 3881875.564; 716902.097, 3881871.486; 716898.303, 3881867.503; 716895.618, 3881865.687; 716889.393, 3881869.389; 716862.828, 3881862.674; 716835.139, 3881871.882; 716810.171, 3881878.873; 716787.553, 3881891.762; 716781.183, 3881895.348; 716777.954, 3881896.892; 716768.183, 3881905.464; 716762.147, 3881907.219; 716708.444, 3881937.146; 716703.234, 3881940.574; 716703.234, 3882042.041; 716716.723, 3882144.560; 716726.417, 3882143.027; 716726.478, 3882143.016; 716726.735, 3882142.963; 716726.987, 3882142.893; 716727.234, 3882142.807; 716727.313, 3882142.775; 716765.764, 3882126.966; 716765.839, 3882126.935; 716771.542, 3882124.453; 716771.629, 3882124.414; 716771.694, 3882124.383; 716776.302, 3882122.145; 716778.508, 3882123.011; 716778.594, 3882123.044; 716778.843, 3882123.126; 716779.096, 3882123.191; 716779.354, 3882123.240; 716779.613, 3882123.272; 716779.875, 3882123.287; 716780.137, 3882123.285; 716780.398, 3882123.265; 716780.657, 3882123.229; 716780.913, 3882123.175; 716781.165, 3882123.105; 716781.413, 3882123.019; 716781.654, 3882122.917; 716847.121, 3882075.801; 716868.648, 3882058.674; 716871.215, 3882056.537; 716874.689, 3882053.722; 716877.292, 3882051.011; 716880.545, 3882046.465; 716881.633, 3882045.391; 716884.591, 3882002.430; 716882.651, 3882000.332; 716901.717, 3881944.965; 716901.701, 3881944.976 thence returning to 716901.590, 3881944.987.

(x) Subunit 1J, Eucalyptus South. Land bounded by the following UTM NAD83 coordinates (E,N): 716919.144, 3881805.190; 716919.266, 3881802.161; 716922.805, 3881800.049; 716922.256, 3881800.620; 716926.271, 3881797.243; 716929.593, 3881794.330; 716933.077, 3881790.280; 716932.628, 3881791.752; 716972.495, 3881748.302; 716969.825, 3881749.692; 716972.599, 3881744.935; 716973.625, 3881741.209; 716978.607, 3881736.577; 716978.746, 3881730.922; 716984.576, 3881725.141; 716986.468, 3881720.893; 716983.830, 3881720.575; 716982.507, 3881717.658; 716981.311, 3881714.831; 716978.816, 3881710.027; 716976.287, 3881703.884; 716976.411, 3881699.190; 716970.237, 3881692.141; 716969.037, 3881688.746; 716971.148, 3881688.716; 716967.414, 3881683.906; 716963.454, 3881679.231; 716955.856, 3881673.812; 716955.304, 3881670.234; 716947.782, 3881665.853; 716944.988, 3881662.510; 716936.983, 3881644.907; 716933.485, 3881639.258; 716925.558, 3881634.937; 716927.136, 3881627.499; 716913.729, 3881600.683; 716905.176, 3881583.895; 716886.621, 3881584.810; 716872.725, 3881593.767; 716856.582, 3881593.624; 716892.952, 3881567.421; 716896.865, 3881560.562; 716929.308, 3881520.671; 716926.330, 3881513.987; 716923.146, 3881507.284; 716905.362, 3881471.062; 716905.052, 3881471.943; 716897.254, 3881456.896; 716898.348, 3881455.060; 716891.188, 3881455.945; 716883.462, 3881453.525; 716875.784, 3881457.473; 716869.897, 3881456.792; 716862.100, 3881455.948; 716852.674, 3881459.227; 716848.438, 3881459.258; 716840.579, 3881454.813; 716832.623, 3881454.397; 716826.464, 3881456.270; 716815.056, 3881453.288; 716797.657, 3881463.076; 716789.810, 3881468.650; 716745.987, 3881493.262; 716745.943, 3881493.287; 716732.250, 3881500.990; 716719.735, 3881522.312; 716720.153, 3881526.181; 716720.030, 3881529.528; 716720.031, 3881529.842; 716720.050, 3881530.103; 716720.075, 3881530.290;

716720.587, 3881533.580; 716720.332, 3881536.833; 716719.367, 3881543.128; 716719.336, 3881543.377; 716719.331, 3881543.443; 716717.936, 3881562.560; 716717.929, 3881563.018; 716717.939, 3881563.188; 716718.765, 3881572.980; 716718.774, 3881573.071; 716718.810, 3881573.331; 716718.864, 3881573.587; 716718.910, 3881573.760; 716721.425, 3881582.417; 716721.954, 3881587.176; 716721.958, 3881587.210; 716723.067, 3881596.477; 716721.261, 3881601.979; 716721.223, 3881602.099; 716721.158, 3881602.353; 716721.109, 3881602.610; 716721.077, 3881602.870; 716721.062, 3881603.131; 716721.064, 3881603.393; 716721.084, 3881603.654; 716721.120, 3881603.913; 716721.174, 3881604.170; 716721.244, 3881604.422; 716721.330, 3881604.669; 716721.338, 3881604.689; 716726.563, 3881617.993; 716717.944, 3881620.223; 716714.753, 3881623.796; 716709.545, 3881626.109; 716705.391, 3881628.915; 716699.456, 3881632.235; 716696.149, 3881633.901; 716678.947, 3881643.888; 716672.172, 3881668.450; 716677.819, 3881765.307; 716687.828, 3881819.799; 716703.515, 3881832.686; 716703.604, 3881832.842; 716703.705, 3881833.010; 716703.852, 3881833.226; 716704.013, 3881833.433; 716704.188, 3881833.628; 716704.374, 3881833.811; 716704.573, 3881833.982; 716704.782, 3881834.140; 716705.001, 3881834.283; 716705.229, 3881834.412; 716705.464, 3881834.526; 716705.707, 3881834.624; 716705.956, 3881834.706; 716706.209, 3881834.771; 716706.467, 3881834.820; 716706.726, 3881834.852; 716706.988, 3881834.867; 716707.250, 3881834.865; 716707.511, 3881834.845; 716707.770, 3881834.809; 716707.893, 3881834.785; 716712.936, 3881833.742; 716714.658, 3881835.078; 716714.808, 3881835.188; 716715.027, 3881835.332; 716715.255, 3881835.461; 716715.491, 3881835.574; 716715.733, 3881835.672; 716715.982, 3881835.754; 716716.235, 3881835.820; 716716.493, 3881835.869; 716716.752, 3881835.901; 716717.014, 3881835.915; 716717.276, 3881835.913; 716717.537, 3881835.894; 716717.796, 3881835.857; 716718.052, 3881835.804; 716718.305, 3881835.734; 716718.552, 3881835.647; 716718.793, 3881835.545; 716718.956, 3881835.465; 716734.912, 3881827.160; 716736.462, 3881828.488; 716736.546, 3881828.558; 716740.266, 3881831.575; 716750.005, 3881841.350; 716752.009, 3881844.698; 716758.704, 3881856.731; 716758.821, 3881856.929; 716758.969, 3881857.145; 716759.035, 3881857.234; 716769.973, 3881871.374; 716770.067, 3881871.491; 716770.242, 3881871.686; 716770.428, 3881871.870; 716770.627, 3881872.041; 716770.836, 3881872.198; 716771.055, 3881872.342; 716771.283, 3881872.471; 716771.518, 3881872.584; 716771.761, 3881872.682; 716772.010, 3881872.764; 716772.263, 3881872.830; 716772.520, 3881872.879; 716772.780, 3881872.911; 716773.042, 3881872.925; 716773.304, 3881872.923; 716773.565, 3881872.904; 716773.824, 3881872.867; 716774.080, 3881872.814; 716774.332, 3881872.744; 716774.580, 3881872.657; 716774.821, 3881872.555; 716775.054, 3881872.437; 716775.280, 3881872.304; 716775.496, 3881872.157; 716775.703, 3881871.996; 716775.829, 3881871.886; 716777.140, 3881872.615; 716777.230, 3881872.663; 716777.466, 3881872.777; 716777.708, 3881872.875; 716777.957, 3881872.957; 716778.210, 3881873.023; 716778.468, 3881873.071; 716778.728, 3881873.103; 716778.989, 3881873.118; 716779.251, 3881873.116; 716779.512, 3881873.096; 716779.771, 3881873.060; 716780.027, 3881873.006; 716780.280, 3881872.936; 716780.527, 3881872.850; 716780.768, 3881872.748; 716781.001, 3881872.630; 716781.227, 3881872.497; 716781.443, 3881872.350; 716781.531, 3881872.284; 716785.890, 3881868.915; 716790.905, 3881866.770; 716802.340, 3881863.870; 716802.552, 3881863.810; 716802.799, 3881863.724; 716803.040, 3881863.621; 716803.274, 3881863.503; 716803.499, 3881863.370; 716803.574, 3881863.322; 716808.071, 3881860.328; 716842.794, 3881855.441; 716842.923, 3881855.420; 716843.114, 3881855.382; 716850.718, 3881853.671; 716918.891, 3881805.855; 716918.866, 3881805.877; 716918.988, 3881805.958; 716919.042, 3881805.765; 716919.101, 3881805.283 thence returning to 716919.144, 3881805.190.

(xi) Subunit 1K, Indian Midden South. Land bounded by the following UTM NAD83 coordinates (E,N): 717594.887, 3881629.742; 717587.417, 3881624.260; 717518.123, 3881664.367; 717517.907, 3881664.514; 717517.700, 3881664.675; 717517.505, 3881664.850; 717517.322, 3881665.037; 717517.151, 3881665.235; 717516.993, 3881665.444; 717516.850, 3881665.663; 717516.721, 3881665.891; 717516.694, 3881665.942; 717495.515, 3881707.890; 717488.629, 3881718.363; 717484.420, 3881724.377; 717484.282, 3881724.588; 717484.279, 3881724.592; 717478.444, 3881734.189; 717471.489, 3881742.187; 717471.393, 3881742.302; 717471.236, 3881742.511; 717471.092, 3881742.730; 717470.963, 3881742.958; 717470.850, 3881743.193; 717470.752, 3881743.436; 717470.670, 3881743.685; 717470.604, 3881743.938; 717470.555, 3881744.196; 717470.523, 3881744.455; 717470.510, 3881744.685; 717469.524, 3881775.734; 717469.524, 3881775.749; 717469.523, 3881775.766; 717469.526, 3881776.028; 717469.545, 3881776.289; 717469.581, 3881776.548; 717469.635, 3881776.804; 717469.705, 3881777.056; 717469.791, 3881777.304; 717469.893, 3881777.545; 717470.011, 3881777.778; 717470.144, 3881778.004; 717470.292, 3881778.220; 717470.453, 3881778.427; 717470.627, 3881778.622; 717470.814, 3881778.805; 717471.012, 3881778.976; 717471.221, 3881779.134; 717471.440, 3881779.277; 717471.579, 3881779.358; 717475.869, 3881781.742; 717475.958, 3881781.790; 717476.194, 3881781.904; 717476.437, 3881782.002; 717476.685, 3881782.084; 717476.939, 3881782.149; 717477.196, 3881782.198; 717477.456, 3881782.230; 717477.717, 3881782.245; 717477.979, 3881782.242; 717478.240, 3881782.223; 717478.499, 3881782.187; 717478.756, 3881782.133; 717479.008, 3881782.063; 717479.255, 3881781.977; 717479.496, 3881781.874; 717484.870, 3881779.380; 717495.967, 3881778.362; 717496.029, 3881778.355; 717496.288, 3881778.319; 717496.497, 3881778.277; 717507.934, 3881774.927; 717512.414, 3881771.652; 717514.859, 3881770.487; 717515.056, 3881770.387; 717515.282, 3881770.254; 717515.389, 3881770.184; 717534.558, 3881757.147; 717534.667, 3881757.070; 717534.874, 3881756.909; 717535.069, 3881756.734; 717571.788, 3881728.895; 717577.507, 3881724.715; 717580.290, 3881723.390; 717599.460, 3881710.353; 717610.418, 3881694.979; 717619.087, 3881686.896; 717624.513, 3881677.575; 717616.573, 3881637.608; 717610.014, 3881636.026; 717602.925, 3881633.156 thence returning to 717594.887, 3881629.742.

(xii) Subunit 1L, Boyscout North. Land bounded by the following UTM NAD83 coordinates (E,N): 717429.132, 3881607.279; 717442.528, 3881597.397; 717452.627, 3881595.331; 717454.984, 3881596.689; 717455.963, 3881597.967; 717456.069, 3881598.099; 717456.243, 3881598.295; 717456.430, 3881598.478; 717456.628, 3881598.649; 717456.837, 3881598.807; 717457.056, 3881598.950; 717457.284, 3881599.079; 717457.520, 3881599.193; 717457.763, 3881599.291; 717458.011, 3881599.373; 717458.265, 3881599.438; 717458.522, 3881599.487; 717458.782, 3881599.519; 717459.043, 3881599.534; 717459.305, 3881599.531; 717459.566, 3881599.512; 717459.825, 3881599.475; 717459.917, 3881599.458; 717474.734, 3881596.519; 717474.898, 3881596.483; 717475.151, 3881596.413; 717475.398, 3881596.326; 717475.639, 3881596.224; 717475.872, 3881596.106; 717476.098, 3881595.973; 717476.293, 3881595.841; 717478.173, 3881594.487; 717526.303, 3881594.185; 717526.444, 3881594.182; 717526.705, 3881594.162; 717526.964, 3881594.126; 717527.220, 3881594.072; 717527.473, 3881594.002; 717527.720, 3881593.916; 717527.961, 3881593.814; 717528.195, 3881593.696; 717528.420, 3881593.563; 717528.637,

3881593.416; 717593.429, 3881546.699; 717594.350, 3881544.669; 717639.305, 3881467.382; 717611.717, 3881415.200; 717570.390, 3881360.904; 717501.096, 3881401.011; 717500.969, 3881401.095; 717380.454, 3881484.126; 717380.365, 3881484.189; 717380.159, 3881484.350; 717379.963, 3881484.525; 717379.780, 3881484.712; 717379.609, 3881484.910; 717379.452, 3881485.119; 717379.308, 3881485.338; 717379.179, 3881485.566; 717379.105, 3881485.714; 717363.499, 3881518.818; 717362.407, 3881520.850; 717362.385, 3881520.890; 717362.271, 3881521.126; 717362.173, 3881521.369; 717362.092, 3881521.617; 717362.026, 3881521.871; 717361.977, 3881522.128; 717361.945, 3881522.388; 717361.941, 3881522.437; 717361.221, 3881531.789; 717358.527, 3881540.237; 717358.500, 3881540.325; 717358.445, 3881540.535; 717357.199, 3881545.825; 717357.189, 3881545.868; 717357.183, 3881545.895; 717354.192, 3881559.711; 717351.725, 3881566.927; 717351.672, 3881567.094; 717351.606, 3881567.347; 717351.593, 3881567.410; 717350.682, 3881571.812; 717350.646, 3881572.006; 717350.614, 3881572.266; 717350.600, 3881572.527; 717350.602, 3881572.789; 717350.621, 3881573.050; 717350.658, 3881573.310; 717350.711, 3881573.566; 717350.781, 3881573.818; 717350.868, 3881574.065; 717350.970, 3881574.306; 717351.088, 3881574.540; 717351.221, 3881574.766; 717351.368, 3881574.982; 717351.529, 3881575.188; 717351.704, 3881575.383; 717351.890, 3881575.566; 717357.483, 3881580.714; 717357.681, 3881580.885; 717357.890, 3881581.043; 717358.109, 3881581.186; 717358.337, 3881581.315; 717358.362, 3881581.328; 717360.442, 3881582.398; 717363.415, 3881584.799; 717363.418, 3881584.802; 717363.478, 3881584.849; 717369.815, 3881589.762; 717369.965, 3881589.873; 717369.983, 3881589.885; 717376.222, 3881594.221; 717382.663, 3881598.767; 717387.755, 3881603.069; 717387.768, 3881603.080; 717390.973, 3881605.764; 717391.031, 3881605.812; 717391.240, 3881605.969; 717391.459, 3881606.113; 717391.687, 3881606.242; 717391.923, 3881606.355; 717392.166, 3881606.454; 717392.414, 3881606.535; 717392.668, 3881606.601; 717392.925, 3881606.650; 717393.185, 3881606.682; 717393.446, 3881606.696; 717393.708, 3881606.694; 717393.956, 3881606.676; 717395.445, 3881606.521; 717415.861, 3881608.699; 717420.726, 3881609.670; 717420.892, 3881609.699; 717421.152, 3881609.731; 717421.413, 3881609.746; 717421.675, 3881609.744; 717421.936, 3881609.724; 717422.195, 3881609.688; 717422.452, 3881609.634; 717422.704, 3881609.564; 717422.733, 3881609.555; 717427.981, 3881607.868; 717428.200, 3881607.791; 717428.441, 3881607.689; 717428.675, 3881607.571; 717428.900, 3881607.438; 717429.116, 3881607.291 thence returning to 717429.132, 3881607.279.

(xiii) Subunit 1M, Tabletop. Land bounded by the following UTM NAD83 coordinates (E,N): 716940.175, 3881274.717; 716940.202, 3881274.717; 716940.238, 3881274.719; 716940.500, 3881274.717; 716940.761, 3881274.697; 716941.020, 3881274.661; 716941.276, 3881274.607; 716941.529, 3881274.537; 716941.682, 3881274.486; 716944.603, 3881273.440; 716946.287, 3881272.937; 716946.337, 3881272.922; 716946.584, 3881272.835; 716946.797, 3881272.746; 716964.921, 3881264.507; 716964.949, 3881264.494; 716965.183, 3881264.376; 716965.408, 3881264.243; 716965.430, 3881264.229; 716967.471, 3881262.916; 716967.665, 3881262.783; 716967.871, 3881262.622; 716968.066, 3881262.448; 716968.175, 3881262.340; 716976.330, 3881258.114; 716980.874, 3881256.007; 716981.108, 3881255.889; 716981.333, 3881255.756; 716981.547, 3881255.611; 716993.268, 3881247.070; 716993.271, 3881247.067; 716993.477, 3881246.906; 716993.673, 3881246.732; 716993.695, 3881246.710; 717046.342, 3881208.892; 717058.063, 3881200.350; 717114.406, 3881145.797; 717116.179, 3881145.778; 717129.174, 3881133.697; 717128.391, 3881121.741; 717125.739, 3881113.587; 717072.701, 3881075.924; 717063.409, 3881070.922; 717059.384, 3881071.179; 717052.005, 3881072.472; 717046.527, 3881074.074; 717038.977, 3881077.467; 717018.713, 3881081.699; 717009.336, 3881084.280; 717057.502, 3881049.528; 717058.275, 3881048.992; 717059.049, 3881048.455; 717059.827, 3881047.734; 717060.604, 3881047.012; 717061.235, 3881046.102; 717061.717, 3881045.004; 717062.200, 3881043.905; 717062.530, 3881042.803; 717063.013, 3881041.705; 717063.348, 3881040.418; 717063.679, 3881039.316; 717063.857, 3881038.210; 717063.884, 3881037.101; 717063.910, 3881035.992; 717063.936, 3881034.882; 717063.963, 3881033.773; 717063.681, 3881032.841; 717063.555, 3881031.729; 717063.273, 3881030.797; 717062.996, 3881029.680; 717062.870, 3881028.567; 717062.745, 3881027.454; 717062.471, 3881026.153; 717062.346, 3881025.040; 717062.068, 3881023.924; 717061.943, 3881022.811; 717061.665, 3881021.694; 717061.539, 3881020.581; 717061.414, 3881019.468; 717061.288, 3881018.355; 717061.158, 3881017.427; 717061.028, 3881016.499; 717060.898, 3881015.571; 717060.773, 3881014.458; 717060.643, 3881013.530; 717060.365, 3881012.414; 717060.235, 3881011.486; 717059.953, 3881010.554; 717059.819, 3881009.811; 717059.684, 3881009.068; 717059.550, 3881008.324; 717059.264, 3881007.578; 717058.977, 3881006.831; 717058.539, 3881006.080; 717058.248, 3881005.519; 717057.961, 3881004.772; 717057.818, 3881004.398; 717057.679, 3881003.840; 717057.388, 3881003.278; 717057.098, 3881002.716; 717056.650, 3881002.336; 717056.051, 3881001.951; 717055.143, 3881001.745; 717054.240, 3881001.353; 717053.332, 3881001.147; 717052.420, 3881001.125; 717051.360, 3881000.915; 717050.447, 3881000.893; 717049.379, 3881001.052; 717048.310, 3881001.212; 717047.237, 3881001.556; 717046.164, 3881001.900; 717045.086, 3881002.430; 717044.161, 3881002.963; 717043.235, 3881003.495; 716977.249, 3881041.795; 716976.171, 3881042.325; 716976.018, 3881042.404; 716975.939, 3881042.449; 716974.088, 3881043.514; 716973.941, 3881043.603; 716973.725, 3881043.750; 716973.519, 3881043.911; 716973.364, 3881044.048; 716972.718, 3881044.646; 716972.012, 3881045.191; 716971.461, 3881045.574; 716969.756, 3881046.556; 716969.609, 3881046.644; 716969.472, 3881046.736; 716968.063, 3881047.713; 716967.283, 3881048.162; 716967.137, 3881048.250; 716966.921, 3881048.398; 716966.714, 3881048.559; 716966.559, 3881048.695; 716966.113, 3881049.109; 716965.580, 3881049.416; 716965.434, 3881049.504; 716965.217, 3881049.652; 716965.132, 3881049.716; 716964.416, 3881050.269; 716963.725, 3881050.667; 716963.578, 3881050.755; 716963.362, 3881050.902; 716963.156, 3881051.064; 716963.001, 3881051.200; 716962.355, 3881051.799; 716961.783, 3881052.241; 716961.091, 3881052.639; 716960.945, 3881052.727; 716960.729, 3881052.875; 716960.522, 3881053.036; 716960.367, 3881053.172; 716959.797, 3881053.701; 716959.256, 3881054.076; 716959.177, 3881054.132; 716959.092, 3881054.197; 716958.162, 3881054.914; 716958.041, 3881055.011; 716957.886, 3881055.148; 716957.316, 3881055.677; 716956.775, 3881056.052; 716956.696, 3881056.108; 716956.611, 3881056.172; 716955.762, 3881056.828; 716955.072, 3881057.306; 716954.993, 3881057.362; 716954.787, 3881057.524; 716954.632, 3881057.660; 716954.061, 3881058.189; 716953.520, 3881058.564; 716953.442, 3881058.620; 716953.356, 3881058.684; 716949.956, 3881061.309; 716949.240, 3881061.661; 716949.087, 3881061.740; 716948.861, 3881061.873; 716948.645, 3881062.021; 716948.559, 3881062.085; 716947.746, 3881062.712; 716945.706, 3881064.059; 716945.551, 3881064.167; 716945.345, 3881064.328; 716945.149, 3881064.502; 716945.130, 3881064.521; 716944.462, 3881065.166; 716943.690, 3881065.676; 716943.535, 3881065.784; 716943.328, 3881065.945; 716943.133, 3881066.119; 716943.114, 3881066.137; 716942.339, 3881066.886; 716940.736, 3881068.124;

716939.273, 3881069.139; 716939.194, 3881069.195; 716939.108, 3881069.259; 716938.643, 3881069.618; 716938.523, 3881069.715; 716938.327, 3881069.889; 716938.144, 3881070.076; 716938.059, 3881070.171; 716937.971, 3881070.273; 716920.077, 3881081.730; 716919.954, 3881081.812; 716919.319, 3881082.253; 716918.539, 3881082.702; 716918.393, 3881082.790; 716918.332, 3881082.830; 716917.352, 3881083.477; 716916.532, 3881083.949; 716916.386, 3881084.037; 716916.169, 3881084.185; 716916.084, 3881084.249; 716915.473, 3881084.720; 716914.757, 3881085.072; 716914.604, 3881085.151; 716914.378, 3881085.284; 716914.162, 3881085.432; 716914.076, 3881085.496; 716911.501, 3881087.484; 716908.229, 3881089.368; 716908.249, 3881088.515; 716908.124, 3881087.402; 716907.994, 3881086.474; 716907.868, 3881085.361; 716907.742, 3881084.249; 716907.617, 3881083.136; 716907.491, 3881082.023; 716907.366, 3881080.910; 716907.236, 3881079.982; 716907.253, 3881079.242; 716907.419, 3881078.691; 716907.423, 3881078.506; 716907.579, 3881078.325; 716901.280, 3881068.185; 716900.676, 3881067.986; 716899.920, 3881067.783; 716899.169, 3881067.395; 716898.265, 3881067.004; 716897.366, 3881066.427; 716896.463, 3881066.036; 716895.568, 3881065.274; 716894.669, 3881064.698; 716893.766, 3881064.307; 716892.711, 3881063.911; 716891.803, 3881063.705; 716890.747, 3881063.310; 716889.687, 3881063.099; 716888.480, 3881062.701; 716887.268, 3881062.487; 716886.056, 3881062.273; 716884.840, 3881062.244; 716883.628, 3881062.030; 716882.564, 3881062.005; 716881.499, 3881061.979; 716880.431, 3881062.139; 716879.366, 3881062.113; 716878.450, 3881062.277; 716877.529, 3881062.625; 716876.312, 3881062.596; 716875.244, 3881062.755; 716874.027, 3881062.726; 716872.802, 3881063.067; 716871.886, 3881063.230; 716870.812, 3881063.574; 716869.891, 3881063.922; 716868.966, 3881064.455; 716868.040, 3881064.988; 716821.597, 3881091.867; 716821.699, 3881154.594; 716823.368, 3881154.634; 716823.630, 3881154.632; 716823.891, 3881154.612; 716823.970, 3881154.603; 716825.191, 3881154.447; 716825.275, 3881154.436; 716826.344, 3881154.276; 716826.440, 3881154.260; 716826.696, 3881154.207; 716826.948, 3881154.137; 716826.975, 3881154.129; 716830.195, 3881153.095; 716830.386, 3881153.028; 716831.307, 3881152.680; 716831.336, 3881152.670; 716831.577, 3881152.567; 716831.810, 3881152.449; 716831.890, 3881152.405; 716832.701, 3881151.938; 716833.660, 3881151.467; 716833.813, 3881151.387; 716833.893, 3881151.343; 716836.669, 3881149.744; 716836.815, 3881149.656; 716837.032, 3881149.508; 716837.238, 3881149.347; 716837.393, 3881149.210; 716900.452, 3881103.581; 716900.898, 3881103.324; 716901.824, 3881102.791; 716902.602, 3881102.070; 716903.379, 3881101.348; 716904.162, 3881100.442; 716904.940, 3881099.721; 716905.717, 3881098.999; 716905.783, 3881098.939; 716905.824, 3881099.045; 716906.064, 3881099.838; 716906.075, 3881099.874; 716906.157, 3881100.112; 716906.499, 3881101.003; 716906.718, 3881101.881; 716906.782, 3881102.111; 716906.796, 3881102.155; 716907.222, 3881103.460; 716907.290, 3881103.654; 716907.683, 3881104.678; 716908.927, 3881108.496; 716908.995, 3881108.689; 716909.337, 3881109.580; 716909.538, 3881110.387; 716909.796, 3881111.616; 716909.823, 3881111.737; 716909.893, 3881111.990; 716909.976, 3881112.227; 716910.835, 3881114.467; 716910.839, 3881114.477; 716910.941, 3881114.718; 716911.059, 3881114.952; 716911.177, 3881115.153; 716912.349, 3881117.031; 716912.364, 3881117.055; 716912.512, 3881117.272; 716912.593, 3881117.379; 716913.036, 3881117.945; 716913.116, 3881118.043; 716913.290, 3881118.239; 716913.477, 3881118.422; 716913.675, 3881118.593; 716913.884, 3881118.751; 716914.103, 3881118.894; 716914.331, 3881119.023; 716914.567, 3881119.137; 716914.810, 3881119.235; 716914.931, 3881119.277; 716915.535, 3881119.476; 716915.662, 3881119.516; 716915.916, 3881119.582; 716916.173, 3881119.630; 716916.433, 3881119.662; 716916.694, 3881119.677; 716916.956, 3881119.675; 716917.217, 3881119.655; 716917.476, 3881119.619; 716917.642, 3881119.586; 716918.331, 3881119.436; 716919.172, 3881119.286; 716919.414, 3881119.236; 716919.543, 3881119.202; 716920.768, 3881118.861; 716920.891, 3881118.825; 716921.138, 3881118.738; 716921.379, 3881118.636; 716921.460, 3881118.598; 716924.430, 3881117.139; 716925.224, 3881116.884; 716925.444, 3881116.806; 716925.685, 3881116.704; 716925.919, 3881116.586; 716925.998, 3881116.542; 716926.643, 3881116.170; 716927.836, 3881115.720; 716928.352, 3881115.628; 716880.020, 3881143.602; 716879.804, 3881143.749; 716879.598, 3881143.910; 716879.403, 3881144.085; 716879.219, 3881144.271; 716879.048, 3881144.470; 716878.891, 3881144.679; 716878.747, 3881144.898; 716878.618, 3881145.126; 716878.505, 3881145.362; 716878.407, 3881145.604; 716878.325, 3881145.853; 716878.259, 3881146.106; 716878.210, 3881146.364; 716878.178, 3881146.623; 716869.106, 3881153.638; 716869.083, 3881153.653; 716868.867, 3881153.800; 716868.660, 3881153.961; 716868.465, 3881154.135; 716868.282, 3881154.322; 716868.252, 3881154.354; 716827.536, 3881188.796; 716827.528, 3881188.802; 716827.333, 3881188.976; 716827.150, 3881189.163; 716826.979, 3881189.361; 716826.821, 3881189.570; 716826.775, 3881189.637; 716821.768, 3881197.074; 716821.834, 3881237.818; 716816.186, 3881322.532; 716807.748, 3881345.738; 716837.630, 3881339.679; 716837.778, 3881339.646; 716838.030, 3881339.576; 716838.277, 3881339.489; 716838.518, 3881339.387; 716838.752, 3881339.269; 716838.978, 3881339.136; 716839.194, 3881338.989; 716839.400, 3881338.828; 716839.596, 3881338.653; 716839.779, 3881338.467; 716839.950, 3881338.268; 716840.107, 3881338.059; 716840.149, 3881337.999; 716858.431, 3881310.974; 716859.487, 3881310.709; 716859.574, 3881310.702; 716859.833, 3881310.666; 716860.089, 3881310.612; 716860.341, 3881310.542; 716860.420, 3881310.517; 716861.072, 3881310.298; 716861.241, 3881310.237; 716861.482, 3881310.135; 716861.716, 3881310.017; 716861.942, 3881309.884; 716862.158, 3881309.736; 716862.364, 3881309.575; 716862.559, 3881309.401; 716862.743, 3881309.214; 716862.914, 3881309.016; 716863.071, 3881308.807; 716863.215, 3881308.588; 716863.344, 3881308.360; 716863.457, 3881308.124; 716863.555, 3881307.881; 716863.637, 3881307.633; 716863.686, 3881307.445; 716866.030, 3881306.269; 716878.557, 3881300.458; 716878.741, 3881300.367; 716884.752, 3881297.196; 716889.529, 3881295.267; 716889.866, 3881295.135; 716903.986, 3881292.272; 716906.422, 3881288.672; 716914.046, 3881285.695; 716914.274, 3881285.597; 716914.508, 3881285.480; 716914.699, 3881285.369; 716919.510, 3881282.387; 716934.890, 3881276.627 thence returning to 16940.175, 3881274.717.

(xiv) Subunit 1N, ''1''. Land bounded by the following UTM NAD83 coordinates (E,N): 716890.664, 3880945.919; 716891.316, 3880945.738; 716891.938, 3880945.753; 716892.200, 3880945.750; 716892.461, 3880945.731; 716892.540, 3880945.722; 716893.761, 3880945.566; 716893.941, 3880945.538; 716894.197, 3880945.485; 716894.326, 3880945.452; 716895.241, 3880945.197; 716896.293, 3880945.080; 716896.539, 3880945.045; 716896.795, 3880944.992; 716896.803, 3880944.990; 716897.928, 3880944.715; 716899.043, 3880944.591; 716899.289, 3880944.556; 716899.545, 3880944.503; 716899.553, 3880944.501; 716900.711, 3880944.217; 716901.674, 3880944.094; 716903.014, 3880943.946; 716903.080, 3880943.938; 716904.300, 3880943.782; 716904.480, 3880943.755; 716904.737, 3880943.702; 716904.745, 3880943.700; 716905.902, 3880943.416; 716908.119, 3880943.133; 716908.299, 3880943.106; 716908.555, 3880943.053; 716908.684, 3880943.019; 716909.672, 3880942.744; 716911.565, 3880942.462;

716911.662, 3880942.446; 716911.918, 3880942.393; 716912.170, 3880942.323; 716912.197, 3880942.314; 716914.344, 3880941.626; 716914.535, 3880941.559; 716915.456, 3880941.211; 716915.485, 3880941.200; 716915.726, 3880941.098; 716915.959, 3880940.980; 716916.038, 3880940.935; 716918.535, 3880939.498; 716920.648, 3880938.699; 716921.144, 3880938.611; 716922.158, 3880938.460; 716922.254, 3880938.444; 716922.510, 3880938.391; 716922.762, 3880938.321; 716922.981, 3880938.245; 716924.823, 3880937.549; 716924.852, 3880937.539; 716925.093, 3880937.436; 716925.326, 3880937.318; 716925.406, 3880937.274; 716926.051, 3880936.902; 716926.670, 3880936.668; 716926.698, 3880936.658; 716926.939, 3880936.555; 716927.173, 3880936.437; 716927.252, 3880936.393; 716929.103, 3880935.327; 716929.250, 3880935.239; 716929.387, 3880935.147; 716930.022, 3880934.707; 716930.802, 3880934.258; 716930.948, 3880934.169; 716931.086, 3880934.078; 716931.613, 3880933.713; 716932.421, 3880933.316; 716932.574, 3880933.236; 716932.653, 3880933.192; 716933.464, 3880932.725; 716934.424, 3880932.254; 716934.577, 3880932.174; 716934.656, 3880932.130; 716935.376, 3880931.715; 716936.387, 3880931.283; 716936.498, 3880931.234; 716936.579, 3880931.195; 716937.562, 3880930.712; 716938.694, 3880930.228; 716938.805, 3880930.179; 716938.886, 3880930.140; 716939.869, 3880929.657; 716941.002, 3880929.173; 716941.112, 3880929.124; 716941.346, 3880929.006; 716941.425, 3880928.962; 716941.982, 3880928.641; 716942.650, 3880928.427; 716942.870, 3880928.349; 716943.111, 3880928.247; 716943.191, 3880928.208; 716945.084, 3880927.279; 716945.878, 3880927.024; 716946.098, 3880926.946; 716946.339, 3880926.844; 716946.573, 3880926.726; 716946.798, 3880926.593; 716946.860, 3880926.553; 716947.730, 3880925.979; 716948.579, 3880925.562; 716948.732, 3880925.482; 716948.958, 3880925.349; 716949.174, 3880925.202; 716949.260, 3880925.138; 716950.190, 3880924.420; 716950.310, 3880924.323; 716950.506, 3880924.149; 716950.525, 3880924.130; 716951.459, 3880923.228; 716951.624, 3880923.059; 717016.613, 3880875.958; 717017.248, 3880874.864; 717017.730, 3880873.765; 717018.056, 3880872.848; 717018.382, 3880871.931; 717018.557, 3880871.010; 717018.731, 3880870.089; 717018.909, 3880868.984; 717018.784, 3880867.871; 717018.510, 3880866.569; 717018.085, 3880865.264; 717017.655, 3880864.144; 717017.074, 3880863.020; 717016.640, 3880862.085; 717016.049, 3880861.331; 717015.459, 3880860.577; 717015.159, 3880860.385; 717014.864, 3880860.008; 717014.564, 3880859.816; 717014.300, 3880858.144; 717014.004, 3880857.767; 717013.557, 3880857.387; 717013.105, 3880857.191; 717012.962, 3880856.818; 717012.667, 3880856.440; 717012.215, 3880856.245; 717011.768, 3880855.864; 717011.168, 3880855.480; 717010.417, 3880855.092; 717009.514, 3880854.700; 717008.610, 3880854.309; 717007.707, 3880853.917; 717006.951, 3880853.714; 717006.039, 3880853.693; 717005.126, 3880853.671; 717004.210, 3880853.834; 717003.297, 3880853.812; 717002.381, 3880853.975; 717001.464, 3880854.138; 717000.552, 3880854.117; 716999.787, 3880854.283; 716998.871, 3880854.447; 716997.806, 3880854.421; 716996.890, 3880854.584; 716995.973, 3880854.747; 716995.056, 3880854.911; 716994.140, 3880855.074; 716992.919, 3880855.230; 716991.702, 3880855.201; 716990.330, 3880855.353; 716989.109, 3880855.509; 716987.888, 3880855.664; 716986.511, 3880856.002; 716985.290, 3880856.157; 716984.065, 3880856.498; 716982.688, 3880856.835; 716981.315, 3880856.988; 716980.090, 3880857.328; 716978.708, 3880857.850; 716977.483, 3880858.191; 716976.258, 3880858.532; 716975.028, 3880859.058; 716973.803, 3880859.398; 716972.574, 3880859.924; 716971.501, 3880860.268; 716970.275, 3880860.609; 716969.198, 3880861.138; 716968.120, 3880861.668; 716967.043, 3880862.197; 716965.965, 3880862.726; 716964.736, 3880863.252; 716963.658, 3880863.781; 716962.581, 3880864.310; 716961.655, 3880864.843; 716960.578, 3880865.372; 716959.500, 3880865.902; 716958.423, 3880866.431; 716957.341, 3880867.145; 716956.263, 3880867.674; 716955.181, 3880868.389; 716954.099, 3880869.103; 716953.169, 3880869.821; 716952.239, 3880870.538; 716884.503, 3880909.422; 716882.644, 3880910.857; 716882.523, 3880910.954; 716882.327, 3880911.129; 716882.308, 3880911.147; 716881.374, 3880912.050; 716881.210, 3880912.218; 716881.039, 3880912.416; 716880.909, 3880912.587; 716878.549, 3880915.861; 716878.521, 3880915.899; 716878.378, 3880916.118; 716878.333, 3880916.194; 716877.698, 3880917.289; 716877.614, 3880917.441; 716877.580, 3880917.508; 716877.023, 3880918.623; 716875.611, 3880920.900; 716875.008, 3880921.736; 716873.245, 3880923.779; 716873.159, 3880923.883; 716873.029, 3880924.054; 716871.455, 3880926.236; 716871.428, 3880926.274; 716871.285, 3880926.493; 716871.239, 3880926.569; 716870.685, 3880927.525; 716870.147, 3880928.302; 716870.082, 3880928.399; 716869.608, 3880929.128; 716869.546, 3880929.226; 716869.417, 3880929.454; 716869.303, 3880929.690; 716869.205, 3880929.933; 716869.130, 3880930.160; 716868.965, 3880930.711; 716868.958, 3880930.733; 716868.893, 3880930.986; 716868.844, 3880931.243; 716868.812, 3880931.503; 716868.797, 3880931.765; 716868.788, 3880932.134; 716868.791, 3880932.396; 716868.810, 3880932.657; 716868.847, 3880932.916; 716868.900, 3880933.173; 716868.970, 3880933.425; 716869.056, 3880933.672; 716869.159, 3880933.913; 716869.277, 3880934.147; 716869.409, 3880934.372; 716869.557, 3880934.589; 716869.638, 3880934.696; 716869.766, 3880934.860; 716870.068, 3880935.376; 716870.143, 3880935.500; 716870.291, 3880935.716; 716870.372, 3880935.824; 716871.090, 3880936.741; 716871.340, 3880937.169; 716871.584, 3880937.640; 716871.625, 3880937.718; 716871.758, 3880937.943; 716871.906, 3880938.160; 716871.987, 3880938.267; 716872.060, 3880938.360; 716872.417, 3880939.292; 716872.421, 3880939.302; 716872.524, 3880939.543; 716872.900, 3880940.355; 716873.281, 3880941.348; 716873.285, 3880941.357; 716873.387, 3880941.598; 716873.463, 3880941.754; 716874.045, 3880942.878; 716874.087, 3880942.956; 716874.220, 3880943.182; 716874.245, 3880943.221; 716874.958, 3880944.317; 716875.493, 3880945.174; 716875.902, 3880945.874; 716875.978, 3880945.998; 716876.125, 3880946.215; 716876.287, 3880946.421; 716876.461, 3880946.616; 716876.648, 3880946.800; 716876.846, 3880946.971; 716877.055, 3880947.128; 716877.274, 3880947.272; 716877.502, 3880947.400; 716877.738, 3880947.514; 716877.766, 3880947.526; 716878.217, 3880947.722; 716878.432, 3880947.808; 716878.681, 3880947.890; 716878.934, 3880947.955; 716879.192, 3880948.004; 716879.451, 3880948.036; 716879.713, 3880948.051; 716880.321, 3880948.065; 716880.583, 3880948.063; 716880.844, 3880948.044; 716881.007, 3880948.023; 716882.076, 3880947.863; 716882.172, 3880947.848; 716882.428, 3880947.794; 716882.680, 3880947.724; 716882.708, 3880947.716; 716884.779, 3880947.051; 716885.650, 3880946.809; 716886.584, 3880946.689; 716886.764, 3880946.662; 716887.020, 3880946.609; 716887.273, 3880946.539; 716887.300, 3880946.530; 716888.022, 3880946.298; 716890.099, 3880946.033; 716890.279, 3880946.006; 716890.535, 3880945.953 thence returning to 716890.664, 3880945.919.

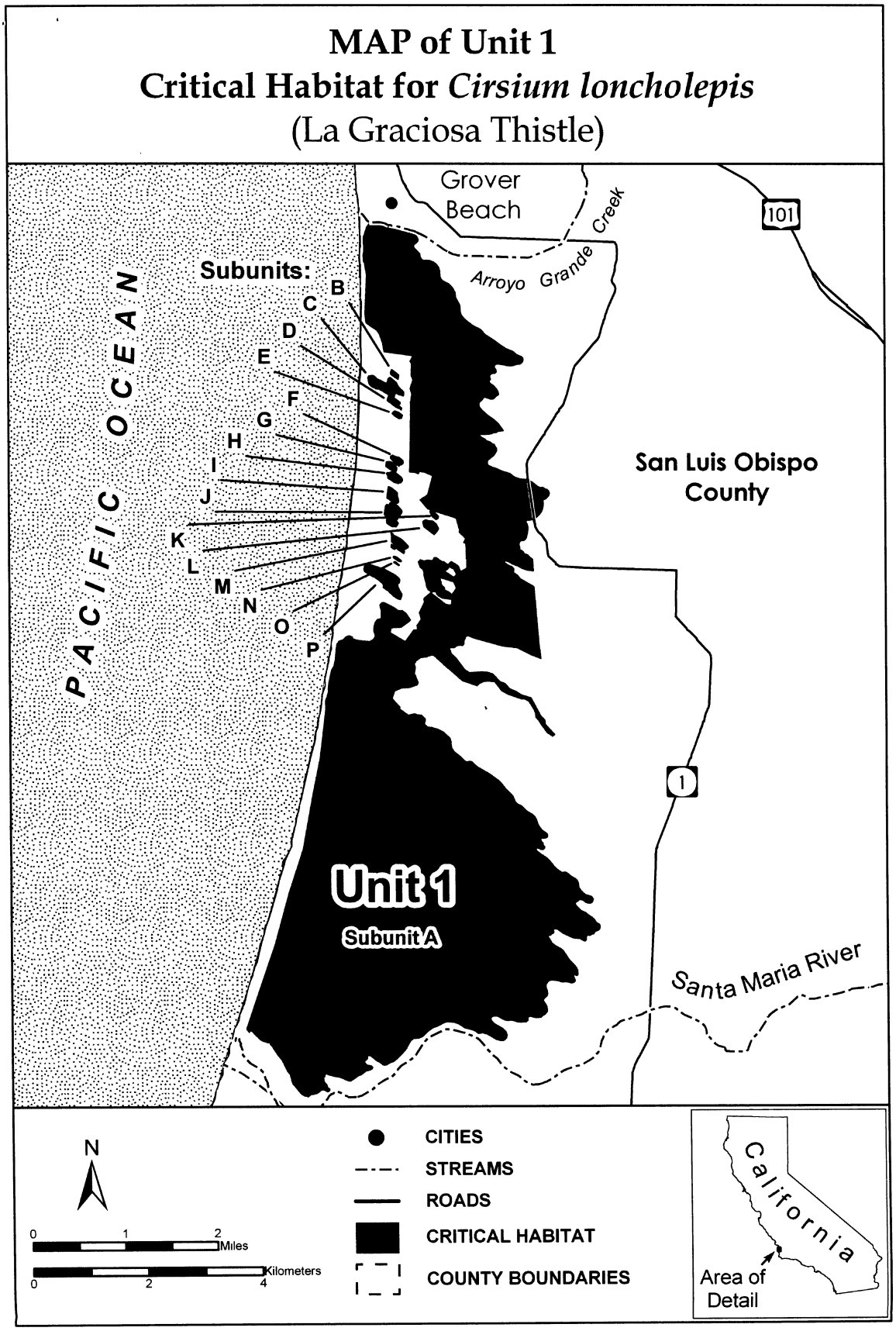
(xv) Subunit 1O. ''2''. Land bounded by the following UTM NAD83 coordinates (E,N): 716899.053, 3880854.872; 716900.158, 3880854.749; 716901.258, 3880854.776; 716901.519, 3880854.773; 716901.741, 3880854.758; 716903.266, 3880854.609; 716903.305, 3880854.605; 716903.385, 3880854.596; 716904.605, 3880854.440; 716904.785, 3880854.413; 716905.042, 3880854.360; 716905.050, 3880854.358; 716906.427, 3880854.020; 716906.548, 3880853.989; 716907.535, 3880853.714; 716908.360,

3880853.591; 716908.456, 3880853.576; 716908.713, 3880853.522; 716908.965, 3880853.452; 716909.184, 3880853.377; 716909.757, 3880853.160; 716910.308, 3880853.062; 716910.551, 3880853.011; 716910.803, 3880852.941; 716911.050, 3880852.855; 716911.271, 3880852.761; 716911.753, 3880852.541; 716911.952, 3880852.486; 716912.531, 3880852.360; 716913.371, 3880852.210; 716913.523, 3880852.180; 716914.212, 3880852.030; 716915.969, 3880851.717; 716916.211, 3880851.666; 716916.464, 3880851.596; 716916.682, 3880851.521; 716918.525, 3880850.825; 716918.553, 3880850.814; 716918.794, 3880850.711; 716919.028, 3880850.594; 716919.253, 3880850.461; 716919.470, 3880850.313; 716919.555, 3880850.249; 716919.680, 3880850.153; 716984.126, 3880803.648; 716984.262, 3880803.596; 716985.192, 3880802.879; 716985.822, 3880801.969; 716986.457, 3880800.874; 716986.787, 3880799.772; 716986.970, 3880798.481; 716986.997, 3880797.372; 716986.875, 3880796.074; 716986.750, 3880794.961; 716986.320, 3880793.841; 716986.038, 3880792.909; 716985.604, 3880791.974; 716985.161, 3880791.409; 716984.566, 3880790.839; 716983.967, 3880790.455; 716983.063, 3880790.064; 716982.008, 3880789.668; 716980.800, 3880789.270; 716979.593, 3880788.871; 716978.385, 3880788.472; 716977.330, 3880788.077; 716976.422, 3880787.870; 716975.514, 3880787.664; 716974.602, 3880787.642; 716973.689, 3880787.620; 716972.630, 3880787.410; 716971.413, 3880787.381; 716970.192, 3880787.537; 716968.972, 3880787.693; 716967.903, 3880787.852; 716966.678, 3880788.193; 716965.600, 3880788.722; 716964.527, 3880789.067; 716963.602, 3880789.599; 716962.524, 3880790.129; 716961.599, 3880790.662; 716960.673, 3880791.195; 716892.785, 3880830.488; 716891.526, 3880831.213; 716891.379, 3880831.302; 716891.163, 3880831.449; 716891.077, 3880831.513; 716890.147, 3880832.231; 716890.027, 3880832.328; 716889.871, 3880832.465; 716889.094, 3880833.186; 716889.053, 3880833.224; 716888.870, 3880833.411; 716888.786, 3880833.505; 716888.160, 3880834.230; 716887.377, 3880835.137; 716887.291, 3880835.240; 716887.133, 3880835.449; 716887.052, 3880835.570; 716886.726, 3880836.071; 716886.278, 3880836.590; 716886.191, 3880836.694; 716886.034, 3880836.903; 716885.890, 3880837.122; 716885.762, 3880837.350; 716885.648, 3880837.586; 716885.550, 3880837.829; 716885.537, 3880837.864; 716885.211, 3880838.781; 716885.142, 3880838.994; 716885.076, 3880839.248; 716885.031, 3880839.484; 716884.852, 3880840.590; 716884.849, 3880840.611; 716884.817, 3880840.871; 716884.802, 3880841.132; 716884.763, 3880842.796; 716884.765, 3880843.058; 716884.784, 3880843.319; 716884.821, 3880843.578; 716884.874, 3880843.834; 716884.933, 3880844.051; 716885.215, 3880844.982; 716885.226, 3880845.018; 716885.313, 3880845.265; 716885.415, 3880845.506; 716885.533, 3880845.740; 716885.590, 3880845.841; 716886.028, 3880846.592; 716886.104, 3880846.716; 716886.252, 3880846.933; 716886.413, 3880847.139; 716886.587, 3880847.334; 716886.774, 3880847.518; 716886.890, 3880847.620; 716887.477, 3880848.120; 716887.966, 3880848.744; 716888.046, 3880848.843; 716888.220, 3880849.038; 716888.407, 3880849.221; 716888.523, 3880849.324; 716889.417, 3880850.085; 716889.500, 3880850.154; 716889.650, 3880850.269; 716890.696, 3880851.034; 716890.755, 3880851.076; 716890.897, 3880851.171; 716891.797, 3880851.748; 716891.873, 3880851.796; 716892.101, 3880851.925; 716892.121, 3880851.935; 716893.623, 3880852.711; 716893.840, 3880852.814; 716893.868, 3880852.826; 716894.002, 3880852.885; 716894.420, 3880853.351; 716894.504, 3880853.443; 716894.691, 3880853.626; 716894.889, 3880853.797; 716895.099, 3880853.954; 716895.318, 3880854.098; 716895.545, 3880854.227; 716895.781, 3880854.340; 716896.024, 3880854.438; 716896.273, 3880854.520; 716896.526, 3880854.586; 716896.705, 3880854.622; 716897.917, 3880854.836; 716897.995, 3880854.849; 716898.255, 3880854.880; 716898.516, 3880854.895; 716898.778, 3880854.893; 716899.039, 3880854.874 thence returning to 716899.053, 3880854.872.

(xvi) Subunit 1P, Pipeline. Land bounded by the following UTM NAD83 coordinates (E,N): 717051.899, 3880234.231; 717036.683, 3880200.755; 716981.903, 3880212.928; 716913.884, 3880252.508; 716913.808, 3880252.526; 716913.556, 3880252.596; 716913.309, 3880252.682; 716913.068, 3880252.784; 716912.834, 3880252.902; 716912.609, 3880253.035; 716912.392, 3880253.183; 716912.186, 3880253.344; 716911.991, 3880253.518; 716911.807, 3880253.705; 716911.714, 3880253.810; 716831.177, 3880319.621; 716831.139, 3880319.635; 716830.898, 3880319.738; 716830.664, 3880319.856; 716830.439, 3880319.989; 716830.222, 3880320.136; 716830.016, 3880320.297; 716829.821, 3880320.471; 716829.637, 3880320.658; 716829.508, 3880320.806; 716814.633, 3880338.656; 716807.407, 3880343.714; 716796.301, 3880347.175; 716727.959, 3880386.841; 716727.954, 3880386.843; 716727.707, 3880386.929; 716727.466, 3880387.031; 716727.232, 3880387.149; 716727.007, 3880387.282; 716726.790, 3880387.429; 716726.584, 3880387.591; 716726.389, 3880387.765; 716726.205, 3880387.952; 716726.034, 3880388.150; 716725.877, 3880388.359; 716725.733, 3880388.578; 716725.605, 3880388.806; 716725.491, 3880389.042; 716725.393, 3880389.285; 716725.311, 3880389.533; 716725.245, 3880389.787; 716725.197, 3880390.044; 716725.165, 3880390.304; 716725.150, 3880390.565; 716725.152, 3880390.827; 716725.172, 3880391.088; 716725.204, 3880391.322; 716728.084, 3880408.516; 716719.423, 3880451.821; 716661.000, 3880490.770; 716662.048, 3880498.038; 716630.915, 3880514.850; 716614.196, 3880530.049; 716596.962, 3880539.043; 716582.493, 3880543.736; 716559.887, 3880558.994; 716537.847, 3880566.341; 716527.288, 3880570.808; 716400.623, 3880639.208; 716399.920, 3880640.480; 716389.081, 3880646.447; 716388.973, 3880646.509; 716382.024, 3880650.622; 716372.847, 3880673.054; 716372.847, 3880738.002; 716418.028, 3880780.359; 716458.401, 3880782.734; 716489.814, 3880771.538; 716711.756, 3880719.853; 716711.791, 3880719.845; 716712.043, 3880719.775; 716712.291, 3880719.688; 716712.532, 3880719.586; 716712.534, 3880719.585; 716928.611, 3880619.155; 716928.842, 3880619.038; 716929.067, 3880618.905; 716929.284, 3880618.758; 716929.490, 3880618.597; 716929.685, 3880618.422; 716929.869, 3880618.236; 716930.040, 3880618.037; 716930.197, 3880617.828; 716930.341, 3880617.609; 716930.470, 3880617.381; 716930.581, 3880617.152; 716994.076, 3880572.041; 717006.249, 3880544.651; 717009.293, 3880514.218; 716997.119, 3880486.828; 716978.859, 3880474.654; 716981.903, 3880425.961; 717015.379, 3880365.094; 717045.813, 3880313.358; 717061.029, 3880289.011 thence returning to 717051.899, 3880234.231.

(xvii) Note: Map of Unit 1, Subunits 1A through 1P, follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(7) Unit 2: Santa Maria River-Orcutt Creek. San Luis Obispo and Santa Barbara Counties, California. From USGS 1:24,000 scale quadrangle maps Point Sal, Guadalupe, Santa Maria, Casmalia, and Orcutt.

(i) Land bounded by the following UTM NAD83 coordinates (E,N): 724829.403, 3866899.988; 725057.778, 3866813.444; 725141.723, 3866606.554; 725306.085, 3866480.866; 725393.100, 3866297.167; 725509.121, 3865958.775; 725634.809, 3865833.087; 725982.869, 3865562.373; 726263.251, 3865185.308; 726417.945, 3865117.629; 726524.297, 3865020.946; 727336.438, 3865020.946; 727819.855, 3865001.609; 727868.197, 3864730.895; 728341.945, 3864682.554; 728419.292, 3864518.192; 728786.689, 3864228.141; 729289.443, 3864131.458; 729772.860, 3864141.126; 730072.579, 3863841.408; 730059.172, 3863511.215; 729873.603, 3863511.215; 729763.987, 3863378.348; 729624.477, 3863142.509; 729461.715, 3863009.642; 729475.002, 3862983.069; 730408.392, 3862959.817; 731495.575, 3862250.640; 731689.561, 3862117.773; 731697.533, 3861732.460; 732125.364, 3861437.495; 732125.364, 3861320.572; 732481.447, 3861206.307; 732720.608, 3861208.964; 732828.650, 3861067.158; 733104.217, 3861067.158; 733067.280, 3860762.425; 733501.294, 3860780.894; 733547.465, 3860697.785; 733547.465, 3860411.521; 733730.920, 3860414.034; 733732.479, 3860491.953; 734031.474, 3860497.524; 734221.572, 3860420.755; 734618.648, 3860236.068; 735294.160, 3860263.924; 735326.377, 3860229.307; 735349.105, 3860198.938; 735403.599, 3860093.199; 735462.593, 3860011.338; 735483.884, 3859974.453; 735517.037, 3859951.916; 735545.261, 3859926.559; 735643.062, 3859813.365; 735670.702, 3859798.525; 735720.634, 3859794.021; 735766.319, 3859809.614; 735871.918, 3859833.688; 735905.310, 3859851.056; 735940.883, 3859864.323; 735977.886, 3859872.840; 736009.141, 3859876.157; 736080.136, 3859874.534; 736122.809, 3859868.751; 736171.604, 3859853.836; 736216.491, 3859830.993; 736261.549, 3859796.286; 736294.362, 3859759.658; 736334.060, 3859743.021; 736372.074, 3859719.913; 736518.116, 3859599.532; 736555.527, 3859556.712; 736587.688, 3859498.431; 736610.153, 3859472.993; 736712.142, 3859379.831; 736751.846, 3859325.864; 736957.357, 3859144.972; 736996.597, 3859100.454; 737059.512, 3858986.838; 737079.902, 3858929.367; 737107.271, 3858897.715; 737131.128, 3858860.199; 737154.497, 3858801.550; 737179.774, 3858776.821; 737203.786, 3858747.448; 737234.740, 3858692.061; 737268.586, 3858650.461; 737289.275, 3858618.672; 737312.095, 3858566.622; 737324.584, 3858508.884; 737337.483, 3858481.829; 737376.988, 3858430.895; 737397.390, 3858391.399; 737414.318, 3858337.152; 737420.307, 3858274.761; 737412.607, 3858211.898; 737394.174, 3858158.133; 737361.676, 3858103.746; 737318.650, 3858058.109; 737266.244, 3858022.438; 737207.308, 3857999.044; 737176.609, 3857992.308; 737138.810, 3857988.687; 737100.862, 3857990.024; 737063.413, 3857996.296; 736776.935, 3857987.243; 736427.660, 3858103.668; 736233.618, 3858401.199; 736156.001, 3858323.582; 736000.768, 3858271.837; 735884.343, 3858207.157; 735703.237, 3858207.157; 735522.131, 3858258.901; 735366.898, 3858310.646; 735237.537, 3858427.071; 735159.920, 3858504.688; 735108.176, 3858452.943; 735017.623, 3858349.454; 734888.261, 3858258.901; 734758.900, 3858181.285; 734422.561, 3858181.285; 734293.200, 3858220.093; 734150.903, 3858284.774; 733982.733, 3858414.135; 733918.052, 3858595.240; 733892.180, 3858737.538; 733711.075, 3858763.410; 733568.777, 3858879.835; 733439.416, 3859060.941; 733271.246, 3859216.174; 732999.588, 3859099.749; 732909.035, 3858983.324; 732740.865, 3858866.899; 732533.888, 3858737.538; 732313.974, 3858698.729; 732068.187, 3858595.240; 731783.593, 3858646.985; 731576.615, 3858672.857; 731253.212, 3858828.091; 731072.106, 3858996.260; 731020.361, 3859254.983; 731020.361, 3859487.833; 731085.042, 3859720.683; 731227.339, 3859888.852; 731498.998, 3860069.958; 731770.656, 3860108.767; 731861.209, 3860160.511; 732003.507, 3860264.000; 732076.227, 3860553.903; 731770.656, 3860665.020; 731537.806, 3860703.828; 731356.701, 3860665.020; 731266.148, 3860665.020; 731085.042, 3860677.956; 730929.809, 3860716.764; 730774.575, 3860794.381; 730645.214, 3860897.870; 730528.789, 3861040.167; 730489.981, 3861208.337; 730334.747, 3861285.953; 730179.514, 3861350.634; 730088.961, 3861479.995; 729991.940, 3861635.229; 729940.195, 3861764.590; 729849.643, 3861816.334; 729746.154, 3861893.951; 729694.409, 3861997.440; 729655.601, 3862126.801; 729552.112, 3862139.737; 729435.687, 3862178.546; 729254.581, 3862165.610; 729125.220, 3862152.674; 728957.050, 3862113.865; 728827.689, 3862113.865; 728659.520, 3862152.674; 728478.414, 3862217.354; 728336.117, 3862359.651; 728206.755, 3862294.971; 728012.713, 3862036.248; 727909.225, 3861906.887; 727818.672, 3861777.526; 727650.502, 3861661.101; 727508.205, 3861570.548; 727327.099, 3861544.676; 727145.993, 3861544.676; 726951.952, 3861596.420; 726757.910, 3861738.718; 726641.485, 3861919.823; 726576.804, 3862100.929; 726563.868, 3862346.715; 726628.549, 3862540.757; 726744.974, 3862708.927; 726900.207, 3862851.224; 726951.952, 3862967.649; 727055.441, 3863148.755; 726926.079, 3863239.308; 726796.718, 3863291.052; 726719.101, 3863433.349; 726628.549, 3863549.775; 726576.804, 3863666.200; 726563.868, 3863808.497; 726460.379, 3863847.305; 726318.082, 3863847.305; 726240.465, 3863743.816; 726149.912, 3863446.286; 726085.232, 3863342.797; 725942.934, 3863148.755; 725761.829, 3863019.394; 725567.787, 3862980.585; 725313.663, 3863033.338; 725251.969, 3863035.361; 725195.233, 3863049.143; 724361.066, 3863472.579; 724317.800, 3863499.591; 724290.350, 3863522.640; 724264.463, 3863550.376; 724242.423, 3863581.248; 724224.608, 3863614.729; 724209.538, 3863656.540; 724201.092, 3863699.502; 724199.212, 3863743.899; 724204.217, 3863788.055; 724015.452, 3864261.261; 723899.027, 3864416.495; 723821.411, 3864584.664; 723756.730, 3864791.642; 723614.433, 3864791.642; 723498.008, 3864817.514; 723355.710, 3864921.003; 723213.413, 3865076.237; 723071.116, 3865179.726; 722890.010, 3865399.640; 722773.585, 3865464.320; 722238.253, 3865670.263; 722194.818, 3865679.936; 722159.314, 3865693.377; 722116.060, 3865717.474; 722076.497, 3865748.614; 722042.972, 3865786.160; 722015.292, 3865831.206; 721981.370, 3865833.050; 721947.174, 3865838.970; 721886.669, 3865860.507; 721859.141, 3865875.649; 721828.332, 3865897.806; 721784.239, 3865942.847; 721740.436, 3865933.285; 721690.126, 3865930.649; 721640.126, 3865936.804; 721591.331, 3865951.712; 721552.054, 3865971.170; 721511.550, 3865999.718; 721483.901, 3866025.701; 721456.170, 3866060.454; 721442.114, 3866083.333; 721244.160, 3867532.086; 721175.434, 3867904.347; 721136.375, 3868204.824; 721102.604, 3868252.666; 721049.278, 3868298.882; 720981.732, 3868316.657; 720653.088, 3868333.427; 719876.113, 3868330.877; 719268.200, 3868423.308; 718685.173, 3868487.299; 718240.792, 3868657.942; 717821.297, 3868878.354; 717408.911, 3869155.648; 716910.418, 3869403.843; 716783.223, 3869450.717; 716555.700, 3869543.148; 716369.254, 3869657.726; 716331.764, 3869689.304; 716297.648, 3869724.473; 716274.556, 3869757.054; 716240.808, 3869815.431; 716204.462, 3869917.451; 716198.331, 3869973.350; 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715762.759, 3871537.568; 715808.822, 3871507.844; 715838.881, 3871498.890; 715866.048, 3871499.402; 715883.836, 3871492.253; 715886.335, 3871486.647; 715904.606, 3871508.267; 715938.784, 3871533.366; 716032.058, 3871558.894; 716069.010, 3871581.326; 716100.360, 3871612.501; 716127.283, 3871625.912; 716155.768, 3871628.486; 716224.962, 3871597.149; 716245.850, 3871606.373; 716257.609, 3871631.746; 716258.626, 3871650.116; 716232.625, 3871660.515; 716215.293, 3871679.223; 716203.696, 3871718.427; 716162.318, 3871752.317; 716148.054, 3871788.758; 716140.409, 3871834.826; 716136.389, 3871842.800; 716158.649, 3871859.274; 716158.796, 3871887.981; 716169.073, 3871917.041; 716181.157, 3871909.000; 716222.181, 3871894.830; 716312.909, 3871874.789; 716404.870, 3871861.559; 716449.210, 3871851.521; 716521.740, 3871823.649; 716570.904, 3871809.617; 716608.995, 3871806.932; 716646.626, 3871829.396; 716684.878, 3871864.820; 716730.220, 3871900.381; 716806.872, 3871942.479; 716864.326, 3871992.712; 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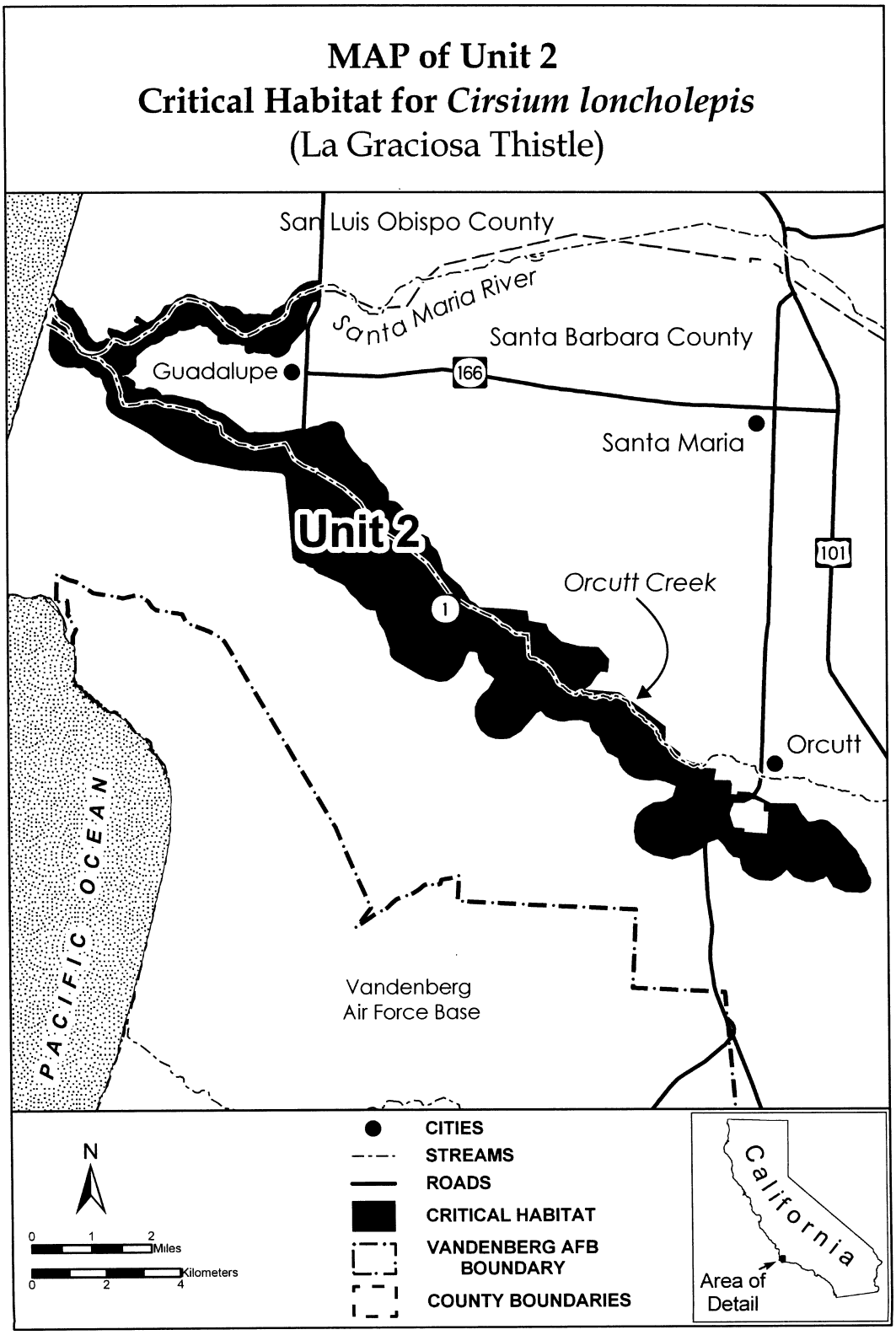
(ii) Excluding land bounded by the following UTM NAD83 coordinates (E,N): 733655.106, 3859548.220; 733713.315, 3859516.470; 733951.440, 3859516.470; 733951.440, 3859418.574; 734594.379, 3859415.928; 734594.379, 3860029.762; 734472.671, 3860021.825; 734462.087, 3860249.367; 734200.149, 3860336.680; 734110.191, 3860336.680; 733932.919, 3860286.409; 733932.919, 3860222.908; 733623.356, 3860209.679; 733615.419, 3860204.388; 733607.481, 3860127.658; 733567.794, 3860053.575; 733541.335, 3859939.804; 733533.398, 3859889.533, thence returning to 733655.106, 3859548.220.

(iii) *Note*: Map of Unit 2 follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

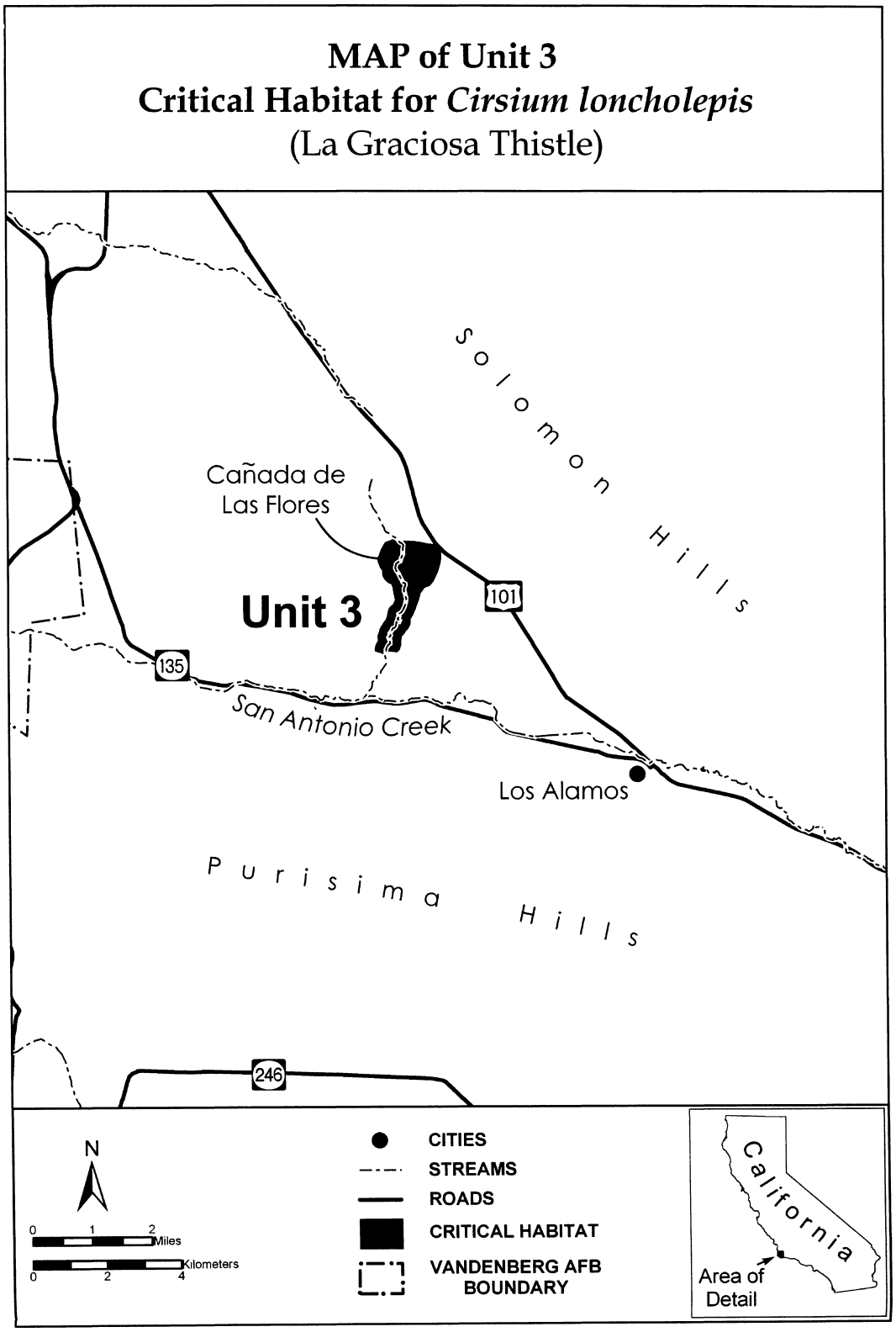
(8) Unit 3: Cañada de las Flores. Santa Barbara County, California.

From USGS 1:24,000 scale quadrangle map Sisquoc.

(i) Land bounded by the following UTM NAD83 coordinates (E,N): 742769.371, 3850494.712; 742558.045, 3850506.855; 742480.757, 3850424.047; 742403.469, 3850418.526; 742326.182, 3850451.649; 742180.608, 3850479.808; 742176.046, 3850556.333; 742179.966, 3850604.548; 742197.266, 3850665.484; 742244.872, 3850766.146; 742232.393, 3850831.688; 742235.064, 3850902.248; 742246.316, 3850957.959; 742266.282, 3851006.692; 742271.161, 3851047.735; 742280.713, 3851084.433; 742300.610, 3851130.658; 742335.427, 3851182.073; 742363.198, 3851243.405; 742393.501, 3851291.810; 742428.881, 3851332.308; 742438.447, 3851374.711; 742456.059, 3851418.737; 742460.917, 3851456.987; 742471.205, 3851495.831; 742471.056, 3851531.608; 742475.730, 3851569.237; 742483.262, 3851599.712; 742496.733, 3851635.168; 742514.722, 3851668.565; 742541.174, 3851704.310; 742572.263, 3851735.193; 742607.918, 3851761.339; 742623.907, 3851815.239; 742649.691, 3851864.564; 742652.120, 3851886.034; 742640.574, 3851923.991; 742625.158, 3851999.294; 742612.124, 3852028.925; 742601.199, 3852065.243; 742582.856, 3852157.109; 742579.204, 3852209.508; 742551.945, 3852255.210; 742534.288, 3852302.239; 742527.166, 3852315.549; 742441.643, 3852346.362; 742392.436, 3852374.906; 742341.575, 3852419.095; 742305.734, 3852466.003; 742285.334, 3852505.503; 742269.776, 3852553.356; 742261.901, 3852604.114; 742262.663, 3852655.305; 742202.779, 3852733.649; 742141.168, 3852858.166; 742121.071, 3852916.252; 742111.430, 3852978.378; 742192.962, 3853223.980; 742288.373, 3853414.498; 742484.384, 3853503.288; 742816.322, 3853483.931; 742812.165, 3853488.105; 743060.207, 3853489.280; 743065.966, 3853483.148; 743066.807, 3853489.311; 743247.057, 3853474.382; 743453.572, 3853451.259; 743453.962, 3853446.350; 743489.957, 3853448.830; 743535.430, 3853447.098; 743584.920, 3853437.679; 743624.984, 3853424.469; 743659.161, 3853407.956; 743694.440, 3853384.414; 743726.939, 3853355.604; 743756.109, 3853321.405; 743779.963, 3853283.885; 743795.542, 3853249.303; 743808.231, 3853208.181; 743817.162, 3853159.062; 743819.034, 3853114.656; 743799.586, 3852934.139; 743754.045, 3852734.460; 743648.950, 3852471.724; 743561.372, 3852342.107; 743421.246, 3852275.548; 743315.693, 3852118.528; 743278.089, 3851942.078; 743217.628, 3851741.984; 743192.999, 3851646.227; 743172.407, 3851598.724; 743164.330, 3851565.450; 743150.859, 3851529.994; 743104.645, 3851444.174; 743085.906, 3851415.556; 743094.436, 3851372.242; 743096.308, 3851327.836; 743092.485, 3851290.106; 743081.742, 3851246.974; 743058.416, 3851186.991; 743036.861, 3851148.104; 743010.075, 3851113.433; 742982.486, 3851086.618; 742954.652, 3851027.748; 742930.598, 3850990.352; 742906.183, 3850962.060; 742866.256, 3850924.586; 742863.516, 3850868.573; 742851.729, 3850818.778; 742861.749, 3850709.010; 742860.315, 3850677.654; 742854.029, 3850640.254; 742840.485, 3850597.916; 742820.986, 3850558.692; 742795.402, 3850522.322 thence returning to 742769.371, 3850494.712.

(ii) *Note*: Map of Unit 3 follows:

BILLING CODE 4310–55–S


MAP of Unit 3
Critical Habitat for *Cirsium loncholepis*
(La Graciosa Thistle)
Solomon Hills
Cañada de Las Flores
Unit 3
101
135
San Antonio Creek
Los Alamos
Purisima Hills
246
N
0 1 2 Miles
0 2 4 Kilometers
CITIES
STREAMS
ROADS
CRITICAL HABITAT
VANDENBERG AFB BOUNDARY
California
Area of Detail

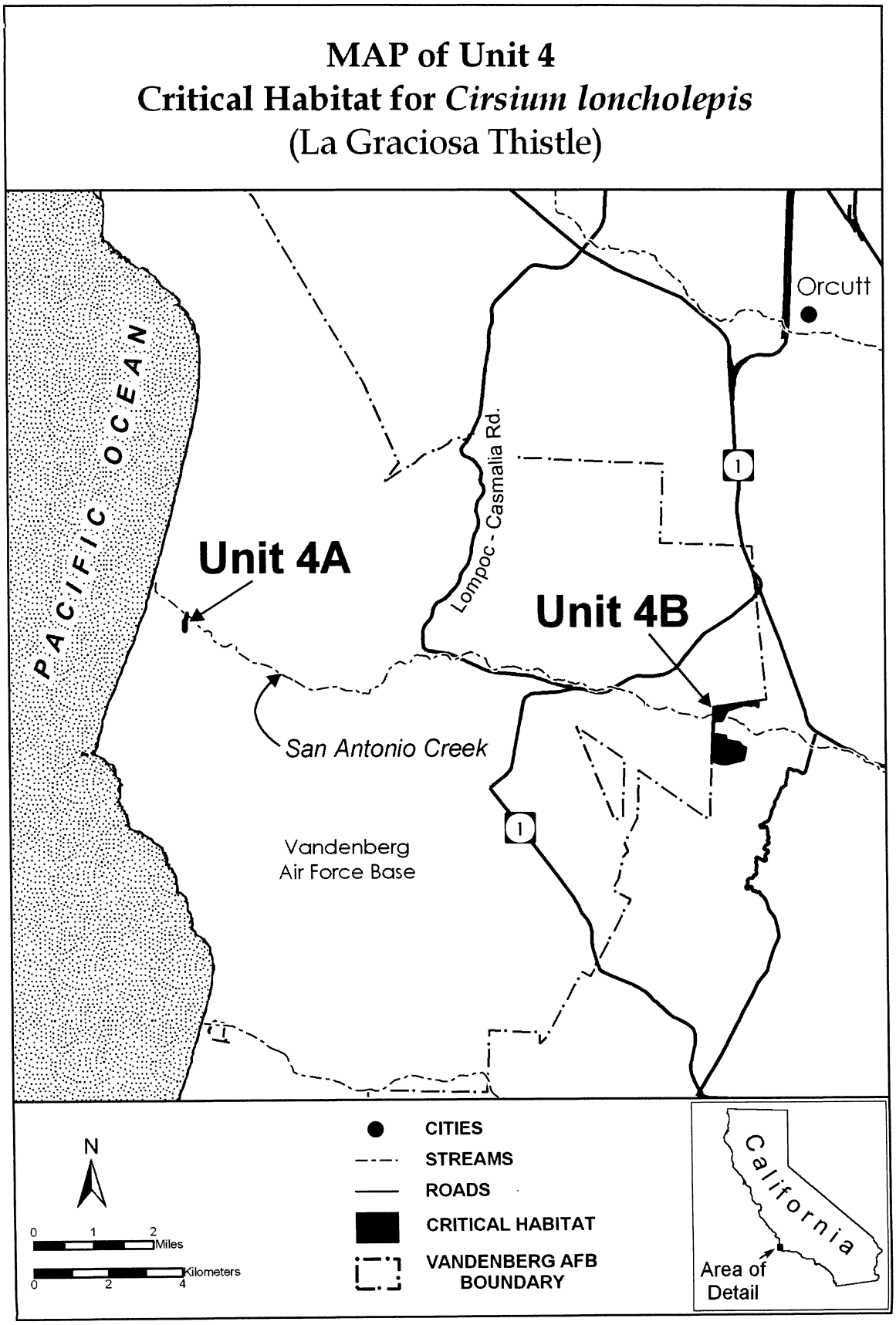
(9) Unit 4: San Antonio Creek. Santa Barbara County, California.

From USGS 1:24,000 scale quadrangle maps Casmalia and Orcutt.

(i) Subunit 4A, La Graciosa. Land bounded by the following UTM NAD83 coordinates (E,N): 732902.768, 3849271.357; 732879.271, 3850720.063; 734040.899, 3850965.604; 734057.904, 3850924.298; 734068.859, 3850868.533; 734069.479, 3850810.290; 733993.764, 3850850.470; 733870.128, 3850837.189; 733804.814, 3850834.724; 733684.096, 3850837.348; 733384.925, 3850708.757; 733248.461, 3850661.520; 733177.605, 3850514.559; 733125.119, 3850380.719; 732899.428, 3850359.725; 732902.053, 3849997.571; 733235.339, 3849968.703; 733258.958, 3849847.985; 733615.864, 3849805.997; 733710.339, 3849703.649; 733797.319, 3849670.195; 733743.180, 3849369.157; 733681.013, 3849339.808; 733359.485, 3849233.027; 733326.746, 3849224.281; 733289.144, 3849219.047; 733164.717, 3849215.800; 733114.440, 3849220.924 thence returning to 732902.768, 3849271.357.

(ii) Subunit 4B, Barka Slough. Land bounded by the following UTM NAD83 coordinates (E,N): 718574.040, 3852437.989; 718573.497, 3852437.751; 718561.975, 3852349.324; 718536.497, 3852010.956; 718515.208, 3852028.143; 718507.426, 3852030.931; 718531.635, 3852352.441; 718543.975, 3852447.144; 718543.941, 3852447.510 thence returning to 718574.040, 3852437.989.

(iii) *Note*: Map of Unit 4, Subunits 4A and 4B, follows:

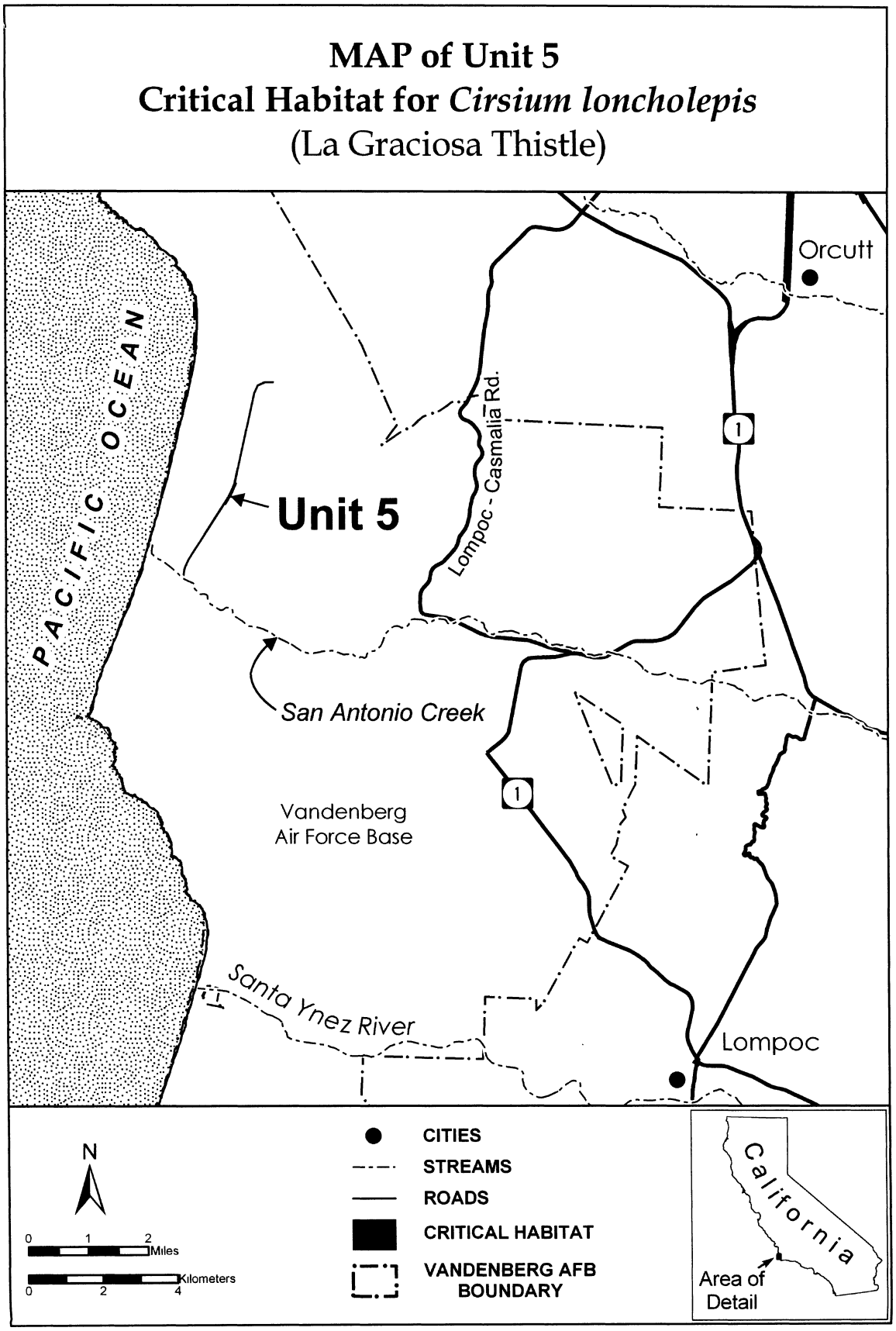

MAP of Unit 4
Critical Habitat for *Cirsium loncholepis*
(La Graciosa Thistle)
PACIFIC OCEAN
Orcutt
Lompoc - Casmalia Rd.
1
Unit 4A
Unit 4B
San Antonio Creek
Vandenberg
Air Force Base
N
0 1 2 Miles
0 2 4 Kilometers
CITIES
STREAMS
ROADS
CRITICAL HABITAT
VANDENBERG AFB
BOUNDARY
California
Area of
Detail

(10) Unit 5: San Antonio Terrace. Santa Barbara County, California.

From USGS 1:24,000 scale quadrangle map Casmalia.

(i) Land bounded by the following UTM NAD83 coordinates (E,N):720671.986, 3857738.093; 720453.412, 3857726.704; 720281.115, 3857636.541; 720199.422, 3857432.991; 719812.779, 3855019.759; 719841.584, 3855009.767; 719747.750, 3854739.257; 719589.722, 3854419.580; 719562.390, 3854433.091; 718693.703, 3852879.368; 718600.969, 3852648.577; 718579.038, 3852436.371; 718578.772, 3852436.492; 718544.020, 3852447.485; 718571.236, 3852656.353; 718666.140, 3852892.545; 719059.902, 3853596.819; 719053.250, 3853600.539; 719528.749, 3854451.014; 719535.402, 3854447.295; 719691.393, 3854762.852; 719783.098, 3855027.223; 719775.572, 3855028.429; 719833.270, 3855388.540; 719840.796, 3855387.334; 720169.857, 3857441.182; 720257.011, 3857658.338; 720445.176, 3857756.805; 720685.817, 3857769.344; 720671.594, 3857740.830 thence returning to 720671.986, 3857738.093.

(ii) *Note*: Map of Unit 5 follows:


MAP of Unit 5
Critical Habitat for *Cirsium loncholepis*
(La Graciosa Thistle)
PACIFIC OCEAN
Unit 5
Lompoc - Casmalia Rd.
Orcutt
1
San Antonio Creek
Vandenberg
Air Force Base
Santa Ynez River
Lompoc
N
0 1 2 Miles
0 2 4 Kilometers
CITIES
STREAMS
ROADS
CRITICAL HABITAT
VANDENBERG AFB BOUNDARY
California
Area of Detail

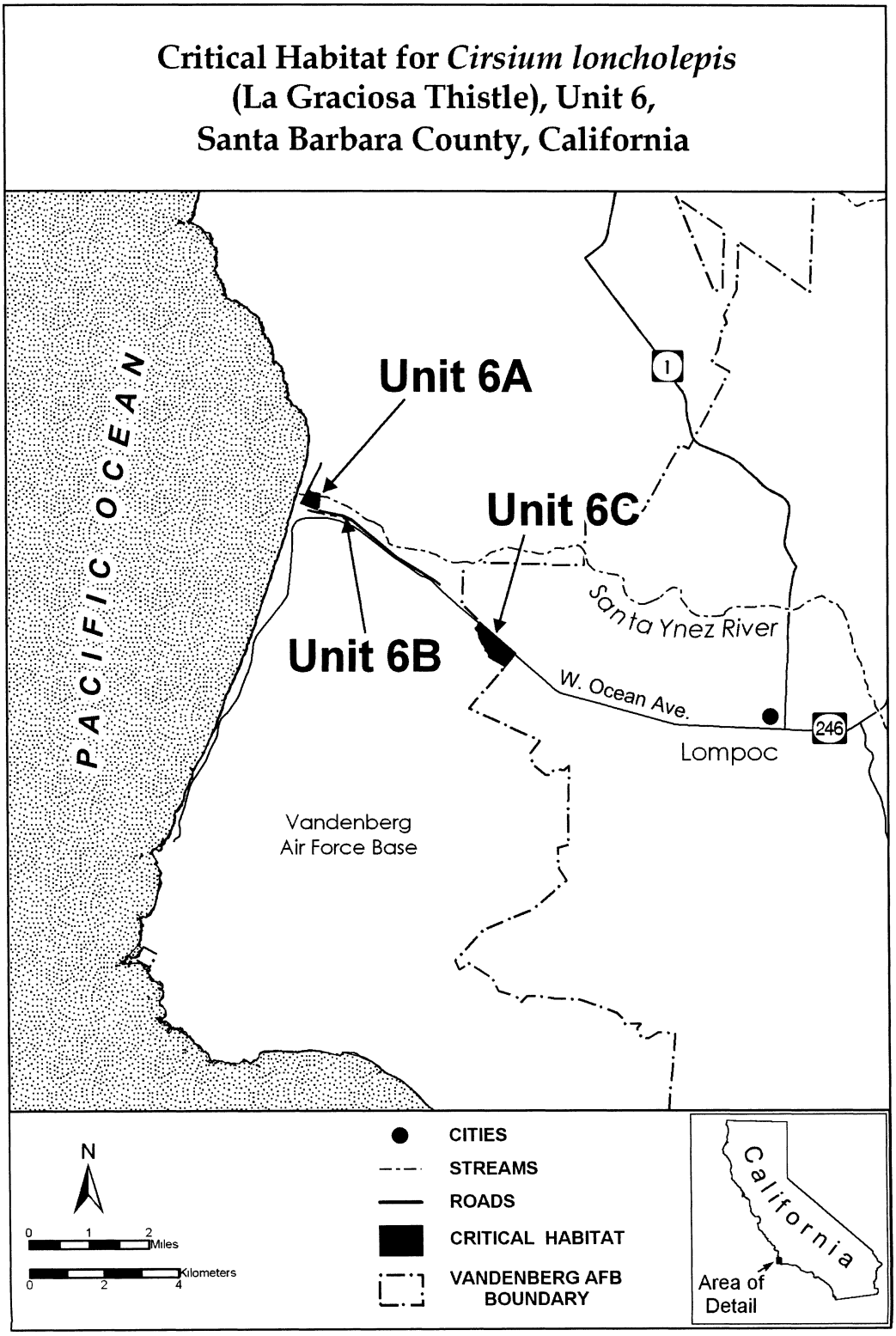
(11) Unit 6: Santa Ynez River. San Luis Obispo County, California. From USGS 1:24,000 scale quadrangle map Surf.

(i) Subunit 6A, Ocean Park. Land bounded by the following UTM NAD83 coordinates (E,N): 719792.443 3841151.121; 719730.100, 3841170.041; 719621.076, 3841203.127; 719717.611, 3841419.172; 719774.993, 3841547.592; 720078.677, 3842226.801; 720100.574, 3842316.450; 720100.560, 3842316.536; 720131.142, 3842313.095; 720131.142, 3842313.089; 720107.678, 3842216.969; 719961.751, 3841890.823; 719803.044, 3841535.634; 719707.554, 3841321.491; 719715.821 3841304.901; 719822.789 3841531.508; 719841.848 3841527.524; 719852.164 3841522.648; 719946.888 3841505.570; 720141.196 3841464.959; 720085.582 3841062.161; thence returning to 719792.443 3841151.121.

(ii) Subunit 6B, Surf. Land bounded by the following UTM NAD83 coordinates (E,N) Land bounded by the following UTM NAD83 coordinates (E,N): 723474.663, 3839240.116; 723474.557, 3839240.155; 723311.640, 3839359.917; 722866.418, 3839587.418; 722273.929, 3839906.194; 721002.007, 3840830.048; 720954.993, 3840831.460; 720879.604, 3840842.694; 720792.364, 3840870.176; 720761.627, 3840922.839; 720605.213, 3840947.380; 720599.378, 3840901.946; 720510.241, 3840921.969; 720449.328, 3840924.762; 720456.185, 3840969.978; 720267.093, 3840998.651; 720267.094, 3841001.464; 720267.095, 3841007.076; 720119.486, 3841051.872; 720783.193, 3840951.285; 720919.150, 3840895.352; 721011.665, 3840860.891; 722289.789, 3839932.356; 723344.086, 3839370.691; 723492.079, 3839261.728; 723492.148, 3839261.657 thence returning to 723474.663, 3839240.116.

(iii) Subunit 6C, Lompoc. Land bounded by the following UTM NAD83 coordinates (E,N): 725260.014, 3837047.156; 725355.118, 3837169.561; 724920.686, 3837394.728; 724627.854, 3837891.814; 724587.911, 3838052.500; 724488.024, 3838137.328; 724619.923, 3838307.972; 724602.411, 3838324.673; 725619.964, 3837543.386; 725271.439, 3837050.804 thence returning to 725260.014, 3837047.156.

(iv) *Note*: Map of Unit 6, Subunits 6A through 6C, follows:



* * * * *

Dated: October 20, 2009

Signed: **Thomas L. Strickland,**

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–26221 Filed 11–02–09 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
November 3, 2009

Part IV

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans; Final Rules and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0435; FRL–8976–1]

Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On October 8, 2009 (74 FR 51795), EPA published a direct final rule deleting certain statutes and rules that were erroneously approved by EPA under the Clean Air Act as part of the Arizona and Nevada state implementation plans. EPA is withdrawing this previously published rule, and in this **Federal Register,** we are publishing a direct final rule that replaces the October 8, 2009, direct final rule.

DATES: The direct final rule published on October 8, 2009 (74 FR 51795) is withdrawn as of November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 8, 2009 (74 FR 51795), EPA published a direct final rule deleting certain statutes and rules that were erroneously approved by EPA under the Clean Air Act as part of the Arizona and Nevada state implementation plans. The statutes and rules that EPA was deleting relate to general declarations of policy, advisory committees, variances, and incidental fees and nuisance odors. Due to a clerical error, the direct final rule that was published on October 8, 2009, was inconsistent with the signed document. Consequently, we are withdrawing the direct final rule published on October 8, 2009, and in this **Federal Register,** we are publishing the direct final rule as originally signed. The direct final rule being published in this **Federal Register** replaces the following direct final rule published on October 8, 2009:

Title: Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans (Direct final rule, 74 FR 51795, October 8, 2009, EPA–R09–OAR–2009–0435).

List of Subjects in 40 CFR Part 52

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

Dated: October 19, 2009.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

[FR Doc. E9–26328 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0435; FRL–8976–2]

Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On October 8, 2009 (74 FR 51824), EPA published a rule proposing to delete certain statutes and rules that were erroneously approved by EPA under the Clean Air Act as part of the Arizona and Nevada state implementation plans. EPA is withdrawing this previously published rule, and in this **Federal Register,** we are publishing a proposed rule that replaces the October 8, 2009, proposed rule.

DATES: The proposed rule published on October 8, 2009 (74 FR 51824) is withdrawn as of November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 8, 2009 (74 FR 51824), EPA published a rule proposing to delete certain statutes and rules that were erroneously approved by EPA under the Clean Air Act as part of the Arizona and Nevada state implementation plans. The statutes and rules that EPA proposed to delete relate to general declarations of policy, advisory committees, variances, and incidental fees and nuisance odors. Due to a clerical error, the proposed rule that was published on October 8, 2009 was inconsistent with the signed document. Consequently, we are withdrawing the proposed rule published on October 8, 2009, and in this **Federal Register**, we are publishing the proposed rule as originally signed. The proposed rule being published in this **Federal Register** replaces the following proposed rule published on October 8, 2009:

Title: Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans (Proposed rule, 74 FR 51824, October 8, 2009, EPA–R09–OAR–2009–0435).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 19, 2009.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

[FR Doc. E9–26327 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0435; FRL–8976–3]

Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is deleting certain statutes and rules that were erroneously approved by EPA under the Clean Air Act as part of the Arizona and Nevada state implementation plans. The statutes that are the subject of this rule are from the Arizona state implementation plan. The rules that are the subject of this rule were adopted by the Pima County Health Department in Arizona and the State Environmental Commission, Clark County District Board of Health, and Washoe County District Board of Health in Nevada. The statutes and rules that EPA is deleting relate to general declarations of policy, advisory committees, variances, and incidental fees and nuisance odors. EPA has determined that the continued presence of these statutory provisions and rules in the applicable state implementation plans is potentially confusing and thus harmful to affected sources, the state, local agencies, the general public and to EPA. The intended effect of this action is to delete these statutes and rules from the Arizona and Nevada state implementation plans. EPA is also correcting certain clerical and typographical errors in the codification of the Pima County portion of the Arizona plan.

DATES: This rule is effective on January 4, 2010 without further notice, unless EPA receives adverse comments by December 3, 2009. 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–2009–0435, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: allen.cynthia@epa.gov.*
3. *Mail or deliver:* Cynthia Allen (AIR–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* portal 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: Cynthia Allen, Rules Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

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

Table of Contents

I. Why is EPA correcting the SIPs?
II. What rules are being deleted?
III. Public Comment and Final Action
IV. Administrative Requirements

I. Why is EPA correcting the SIPs?

The Clean Air Act (CAA or ''Act'') was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into state implementation plans (SIPs) in order to fulfill the new federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, EPA's review of these submittals focused primarily on the new substantive requirements, and we approved many other elements into the SIP with minimal review.

We now recognize that many of these elements were not appropriate for approval into the SIPs because they are not required for SIPs and are not related to the SIPs' purpose under CAA section 110(a) of implementing, maintaining, and enforcing the national ambient air quality standards. Examples of inappropriately-approved SIP elements include statutes and rules that consist of general statements of policy; that govern local advisory boards; that specify incidental fees, method of payment, and refunds; and that regulate nuisance odors. Most of the statutes and rules we are deleting in today's action fall under one of these categories.

In addition, we are deleting certain variance-related provisions that were orphaned by a previous EPA rulemaking deleting most such provisions from the Nevada Division of Environmental Protection (NDEP) portion of the Nevada SIP and the Pima County portion of the Arizona SIP. See EPA's proposed rule at 61 FR 38664 (July 25, 1996) and final rule at 62 FR 34641 (June 27, 1997) for the rationale concerning the inappropriateness of variance provisions in a SIP. As explained in EPA's 1996 rule proposing to remove various variance-related provisions, variance provisions are generally prohibited by, and are not legally enforceable pursuant to, section 110(i) of the Act.

II. What statutory provisions and rules are being deleted?

EPA has determined that the statutes and rules listed in the tables below were inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these statutes and rules were submitted by Arizona and Nevada and approved by EPA are provided. We are deleting these statutes and rules from the Arizona and Nevada SIPs under CAA section 110(k)(6) [1] as inconsistent with the requirements of CAA section 110(a).

[1] Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides, ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.''

ARIZONA REVISED STATUTES

Statute No.	Title	Submittal date	Approval date/FR cite
36–770	Declaration of Policy	07/13/81	06/18/82; 47 FR 26382.
36–776	Authorization to Accept Funds or Grants	07/13/81	06/18/82; 47 FR 26382.
36–777	Advisory Council	07/13/81	06/18/82; 47 FR 26382.

PIMA COUNTY DEPARTMENT OF ENVIRONMENTAL QUALITY

Rule No.	Title	Submittal date	Approval date/FR cite
131	Establishment	10/09/79	04/16/82; 47 FR 16326.
132	Composition	10/09/79	04/16/82; 47 FR 16326.
133	Terms: Nominations	10/09/79	04/16/82; 47 FR 16326.
134	Function	10/09/79	04/16/82; 47 FR 16326.
135	Officers; Procedures	10/09/79	04/16/82; 47 FR 16326.
136	Meetings; Special Studies; Hearings	10/09/79	04/16/82; 47 FR 16326.
137	Compensation; Absences	10/09/79	04/16/82; 47 FR 16326.
164	Copies	10/09/79	04/16/82; 47 FR 16326.
181	Legal Authority	10/09/79	04/16/82; 47 FR 16326.
182	General Procedures	10/09/79	04/16/82; 47 FR 16326.
205	Conditional Permits (Variances)	10/09/79	04/16/82; 47 FR 16326.
214	Permit Fee Payments	10/09/79	04/16/82; 47 FR 16326.
245	Conditional Permit (Variance) Fees	10/09/79	04/16/82; 47 FR 16326.
246	Payment of Permit Fees	10/09/79	04/16/82; 47 FR 16326.
247	Refund of Permit Fees	10/09/79	04/16/82; 47 FR 16326.
248	Fees for Duplicate Permits	10/09/79	04/16/82; 47 FR 16326.

NEVADA STATE REGULATIONS

Rule No.	Title	Submittal date	Approval date/FR cite
2.11.7	Untitled, but related to judicial review of variances	12/29/78	08/27/81; 46 FR 43141.

CLARK COUNTY DEPARTMENT OF AIR QUALITY AND ENVIRONMENTAL MANAGEMENT

Rule No.	Title	Submittal date	Approval date/FR cite
Section 3, rule 3.1	Air Pollution Control Committee	07/24/79	08/27/81; 46 FR 43141.

WASHOE COUNTY DISTRICT HEALTH DEPARTMENT, AIR QUALITY MANAGEMENT DIVISION

Rule No.	Title	Submittal date	Approval date/FR cite
020.020	Adoption, Amending Regulations	06/12/72	07/27/72; 37 FR 15080.
020.030	Hearing Board—Powers and Duties	06/12/72	07/27/72; 37 FR 15080.
020.075	Technical Reports and Fees	06/12/72	07/27/72; 37 FR 15080.
030.3105	Hazardous Materials Processes	07/24/79	08/27/81; 46 FR 43141.
030.3107	Untitled, but related to the cost for permit transfer	07/24/79	08/27/81; 46 FR 43141.
030.3108	Untitled, but related to the cost for permit replacement	07/24/79	08/27/81; 46 FR 43141.
040.055	Nuisance—Odorous or Gaseous Contaminants	06/12/72	07/27/72; 37 FR 15080.

We are also taking this opportunity to correct certain clerical and typographical errors in a certain paragraph from the Arizona subpart of part 52 (''Approval and promulgation of implementation plans'') listing approved rules from the Pima County Health Department as submitted by Arizona on October 9, 1979, and approved by EPA on April 18, 1982 (47 FR 16326). The subject paragraph is 40 CFR 52.120(c)(38)(i)(A). In our 1982 final rule approving certain Pima County rules, we inadvertently identified the rules approved under ''Regulation 21'' as ''Rules 221–225.'' The correct listing for the approved rules under ''Regulation 21'' is ''Rules 211–215.''

In addition, as noted in an EPA final rule published at 69 FR 2509 (January 16, 2004), beginning with the 1993 version of the Code of Federal Regulations (CFR), the Government Printing Office (GPO) inadvertently omitted two lines of codified rules from 40 CFR 52.120(c)(38)(i)(A), the same paragraph listing the Pima County rules approved by us in 1982. Our 2004 correcting amendment replaced most of the Pima County rules inadvertently omitted by the GPO but inadvertently failed to include ''Regulation 21, Rules 221–225,'' which, as noted above, should read: ''Regulation 21: Rules 211–215.''

In addition, beginning with the 2004 version of the CFR, the paragraph (that omitted certain Pima County rules) that was intended to be replaced in its entirety through our 2004 correcting amendment has been published in addition to the replacement paragraph. In this action, we are correcting all of these errors with a revision to 40 CFR

52.120(c)(38)(i)(A) that correctly lists the rules approved under ''Regulation 21'' and that deletes the paragraph that we intended to replace in 2004.

III. Public Comment and Final Action

EPA has reviewed the statutes and rules listed in the tables above and determined that they were previously approved into the respective SIPs in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, EPA is deleting these statutes and rules under section 110(k)(6) of the Act, which provides EPA authority to remove these statutes and rules without additional State submission. EPA is also correcting certain clerical and typographical errors in the codification of the Pima County portion of the Arizona SIP.

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 action. If we receive adverse comments by December 3, 2009, 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 4, 2010.

IV. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2010. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: October 19, 2009.

Nancy Lindsay,

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 D—Arizona

■ 2. Section 52.120 is amended by:
■ a. Revising paragraph (c)(38)(i)(A);
■ b. Adding paragraph (c)(38)(i)(A)(*1*); and
■ c. Adding paragraph (c)(50)(ii)(A)(*1*).

The revision and additions read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(38) * * *

(i) * * *

(A) New or amended Regulation 10: Rules 101–103; Regulation 11: Rules 111–113; Regulation 12: Rules 121–123; Regulation 13: Rules 131–137; Regulation 14: Rules 141 and 143–147; Regulation 15: Rule 151; Regulation 16: Rules 161–165; Regulation 17: Rules 172–174; Regulation 18: Rules 181 and 182; Regulation 20: Rules 201–205; Regulation 21: Rules 211–215; Regulation 22: Rules 221–226; Regulation 23: Rules 231–232; Regulation 24: Rules 241 and 243–248; Regulation 25: Rules 251 and 252; Regulation 30: Rules 301 and 302;

Regulation 31: Rules 312–316 and 318; Regulation 32: Rule 321; Regulation 33: Rules 331 and 332; Regulation 34: Rules 341–344; Regulation 40: Rules 402 and 403; Regulation 41: 411–413; Regulation 50: Rules 501–503 and 505–507; Regulation 51: Rules 511 and 512; Regulation 60: Rule 601; Regulation 61: Rule 611 (Paragraph A.1 to A.3) and Rule 612; Regulation 62: Rules 621–624; Regulation 63: Rule 631; Regulation 64: Rule 641; Regulation 70: Rules 701–705 and 706 (Paragraphs A to C, D.3, D.4, and E); Regulation 71: Rules 711–714; Regulation 72: Rules 721 and 722; Regulation 80: Rules 801–804; Regulation 81: Rule 811; Regulation 82: Rules 821–823; Regulation 90: Rules 901–904; Regulation 91: Rule 911 (except Methods 13–A, 13–B, 14, and 15), and Rules 912 and 913; Regulation 92: Rules 921–924; and Regulation 93: Rules 931 and 932.

(*1*) Previously approved on April 16, 1982 in paragraph (c)(38)(i)(A) of this section and now deleted from the SIP without replacement Pima County Health Department Regulations: Regulation 13: Rules 131–137; Regulation 16: Rule 164; Regulation 18: Rules 181 and 182; Regulation 20: Rule 205; Regulation 21: Rule 214; and Regulation 24: Rules 245–248.

* * * * *

(50) * * *

(ii) * * *

(A) * * *

(*1*) Previously approved on June 18, 1982 in paragraph (c)(50)(ii)(A) of this section and now deleted from the SIP without replacement Arizona Revised Statutes: sections 36–770, 36–776, and 36–777.

* * * * *

Subpart DD—Nevada

■ 3. Section 52.1470 is amended by:

■ a. Adding paragraphs (c)(2)(i), (c)(14)(vii)(A), (c)(16)(viii)(D), and (c)(16)(ix)(A) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(2) * * *

(i) Previously approved on July 27, 1972 in paragraph (c)(2) of this section and now deleted from the SIP without replacement Washoe County Air Quality Regulations: Rules 020.020, 020.030, 020.075, and 040.055.

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(14) * * *

(vii) * * *

(A) Previously approved on August 27, 1981 in paragraph (c)(14)(vii) of this section and now deleted from the SIP without replacement Nevada Air Quality Regulations: Rule 2.11.7.

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(16) * * *

(viii) * * *

(D) Previously approved on August 27, 1981 in paragraph (c)(16)(viii) of this section and now deleted from the SIP without replacement Nevada Air Quality Regulations: Clark County District Board of Health Air Pollution Control Regulations: Section 3, Rule 3.1.

(ix) * * *

(A) Previously approved on August 27, 1981 in paragraph (c)(16)(ix) of this section and now deleted from the SIP without replacement Washoe County Air Quality Regulations: Rules 030.3105, 030.3107, and 030.3108.

* * * * *

[FR Doc. E9–26325 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0435; FRL–8976–4]

Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delete certain statutes and rules that were erroneously approved by EPA under the Clean Air Act as part of the Arizona and Nevada state implementation plans. The statutes that are the subject of this proposal are from the Arizona state implementation plan. The rules that are the subject of this proposal were adopted by Pima County Health Department in Arizona and the State Environmental Commission, Clark County District Board of Health, and Washoe County District Board of Health in Nevada. The statutes and rules that EPA is proposing to delete relate to general declarations of policy, advisory committees, variances, and incidental fees and nuisance odors. EPA is proposing to delete these statutes and rules under section 110(k)(6) of the Clean Air Act. EPA is also proposing to correct certain clerical and typographical errors in the codification of the Pima County portion of the Arizona plan.

DATES: Any comments on this proposal must arrive by December 3, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0435, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
2. *E-mail: allen.cynthia@epa.gov.*
3. *Mail or deliver:* Cynthia Allen (AIR–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* portal 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: Cynthia Allen, Rules Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA. This proposal addresses a number of statutes and rules that EPA has determined were previously approved in error into the Arizona and Nevada state implementation plans (SIPs). EPA is proposing to delete these statutes and rules from the respective SIPs under section 110(k)(6) of the Clean Air Act, which provides EPA authority to remove these statutes and rules without additional State submission.

In the Rules and Regulations section of this **Federal Register,** we are deleting these statutes and rules, and making the necessary corrections to the codification of the Pima County portion of the Arizona state implementation plan, in a direct final action without prior proposal because we believe the deletion of them is not controversial. Please see the direct final action for a list of the specific statutes and rules that are the subject of this action. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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: October 19, 2009.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

[FR Doc. E9–26332 Filed 11–2–09; 8:45 am]

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